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THE LAW

OF

IMPARTIBLE PROPERTY

Rajes, Chieftainships, Zemindaries, Taluks, Tekaiti-Gadis, Military and other Service tenures, Polliems, Ghatwalic, Digwaris, Vatans, Inams, Tarwads &c.,

Tagore Law Lectures for 1904

VOL. I.

BY

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PREFACE TO THE SECOND EDITION.

My Tagore Law Lectures on the Hindu Law of Impartible Property, including Endowments, were published in 1906. They have been long out of print. I therefore thought of bringing out a second edition. I found on a consideration of the matter that it would be better, if the book were divided into two volumes, the first volume dealing only with secular impartible property and the second dealing with religious and public endowments and religious institutions, properties appertaining to which are impartible. This volume thus consists of an account of the various impartible estates and tenures of India, Rajes, Chieftainships, Zemindaries, Taluks, Tekaiti-Gadis, Military and other Service Tenures, Polliems, Ghatwalis, Digwaris, Vatans, Inams, Tarwad and other impartible properties. The subject is a very large and difficult one.

These impartible estates and tenures take us back to the ancient Hindu Kingdoms of this great Peninsula with its variegated races and languages and customs Their romantic history during the Muhammadan and British times embodies a very important part of the authentic history of India. Within the short compass of this book, I have recorded some of that history, as it was indispensable for the determination of the legal status of those ancient estates and tenures.

I have done my best to bring together all available information on the subject. The decisions of the High Courts, Chief Courts and Courts of Judicial Commissioners in India have all been considered and recorded up to the end of September 1916. The principal Regulations and Legislative Enactments concerning impartible estates and hereditary service tenures of Bengal, Behar, Orissa, Oude, Bombay and Madras and the Pucchees Sawal of Orissa embodying the customs of the impartible estates and Tributary Mahals of Orissa, a rare and practically unavailable Government publication, have been inserted in the Appendix.

I have also included in the Appendix the Bengal Settled Estates Act which the Government passed for the benefit of the large Bengal Zemindars, in order to enable them to make their estates practically impartible.

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The Bengal Zemindars within the short period of ten years have practically forgotten the Act and have not taken advantage of it. It was thus necessary to draw their attention to it in the hope that some of them may take advantage of its properties to preserve intact the fast diminishing glories of their ancient houses.

The book has been greatly enlarged and much of it practically rewritten. It has cost me much trouble and labour. I can only hope that the usefulness of the book has been enhanced.

CALCUTTA :
BHOWANIPORE,
1st November, 1916.

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TABLE OF CONTENTS.

LECTURE I.

Introductory Lecture.

The history of the idea of partibility of property. Ancient Aryans a pastoral people. Early Aryans nomadic, averse to saving property. Ancient Aryan social and political constitution. Caste system among ancient Aryans. Similarity between the Laws of Manu and Salic Laws. Were chieftainship and offices impartible. Rule among Celts. Rule under the feudal law. Kingdoms and fiefs became impartible in Europe after tenth century. History of the law of impartibility. Custom among ancient Aryans. Rights of eldest son among ancient Indians. Custom of eldest son's extra share prevalent among all Aryan nation. History of partibility of property. Things impartible according to Hindu Law-givers. Impartible property which is the subject of these lectures. King not master of land nor a chieftain. Hindu idea of King's rights. European idea of King's rights. Shebait's rights. Nature of property in military and service tenures. Impartible property is property attached to an office. Impartibility and inalienability whether they go together. Inalienability and customs of land-holding. Ancient system of holding land among Aryan Hindus. Communal system in the Punjab. Truth about village communities. Disuse of the preferential right of the eldest and impartibility. Religious institutions of modern growth. Right of the parson. Rules about impartible property must be sought outside the Smritis. How dedications were made in Vedic times and the development of the law of endowments. Mode of dedication in Rome,—pre-Christian and Christian. The juridical person in endowments. Object of dedication to Gods according to Hindu Shastras. The scope of these lectures ... Pp. 1—37.

LECTURE II.

Impartible Zemindaries and Tenures their History and description.

Ancient Aryan system. Serfs in ancient times. Serfs in Aryan countries. Caste in Persia and India. Brahmans in ancient India. Brahmans

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and Kshatriyas in ancient India. Different castes. Primogeniture in ancient India. Kings, chiefs of tribes. Immigrations into India. System of Rajput. States. History of impartible tenures attached to offices. System during Mahomedan times. History of Zemindars. Zemindars originally officers of the crown. Zemindaries impartible till 1793. Three classes of Zemindars. Prodhans and Zemindars. Prodhans, Moulas and Samantas of Niti Shastras. Zemindars declared proprietors and not officers. Impartible estates and tenures in Orissa. Impartible estates and tenures of Chotanagpur. Ghatwals. Oude Talookdars. Vatans of Bombay. Dayadi Pattans of Madras. Tarwads. History of some estates. Kharda Raj. Ramgurh Raj. Pareshnath Raj. Dumraon Raj. Ramnagar and Hutwa estates. Durbhanga Raj. Susang Durgapur Raj. Shivagunga Zemindary. Polliem Nargunti ... ... Pp. 38—83

LECTURE III.

Incidents of Impartible Estates and the Rights and Liabilities of Holders of such Estates.

Can impartible property be joint family. Property. Maharani Hira Nath *v.* Ram Narayan. Impartible property not necessarily inalienable. In impartible property there can be no co-ownership. True Hindu Law on the subject. Upon the decisions rule of survivorship applies to joint family Raj and the ordinary rule of inheritance to separate. Rajes and both alienable until contrary proved. Same rule established in Madras in 1889 setting aside earlier rulings. History of the law in Madras. Construction of Madras Reg. 25 of 1802. Settled law that impartible property is alienable *inter vivos* or by will until custom to the contrary is proved. Character of joint family estate considered. Proof of separation. Rule of the Privy Council. When should the holder of an impartible estate be considered separate from the junior members of the family. New rule that separation may be at the will of one member. No presumption that large estates are impartible. Consequences of confiscation and regrant. Incidents of estates created by Sanads. Consequences of devise and compromise. Impartibility is a family custom and not an incident of the property. Impartibility may be discontinued. Whether succession certificate necessary. How far successor bound to pay the debts of a holder. Mortgage binding on successor. Holder has unlimited power of alienation *inter vivos* or by will even against undivided members. Powers of the holder of an inalienable estate. Accumulations. ... ... Pp. 84—129.

CENTRAL LIBRARY

SECTION II.

Maintenance to junior members and maintenance grants and their incidents.

Rule of maintenance in ancient Hindu Rajes. Principles on which the right of maintenance is based. Who are entitled to maintenance. Expenses of marriage and other ceremonies of sons and daughters. Rights of widows and unmarried daughters of deceased junior members. Maintenance whether a charge. The rule of Sukra Niti that one fourth of the estate should be granted. Decree of maintenance, what should it contain. Maintenance grants in Katthiwar descendible to male heirs. Savings absolute property. Maintenance grants held to be lifegrants now on the analogy of Mahammadan and English grants. But not grants for family. Case law on the point. Maintenance grants when lifegrants and when permanent. Maintenance grants without words of inheritance lifegrants. Children of a collateral branch entitled to maintenance. No resumption of maintenance grant should be allowed without providing for widow and children. Chotanagpore Putra-poutradika grants : Sometimes impartible. Hikimali tenures Grants in Palamow. Putra-poutradika grants not resumable from alienees when there are male descendants. Maintenance grants of Darbhanga Raj. Putrapautraparamparyam grants of Madras. Grants of documents governed by its terms. Maintenance grants in Orissa. Maintenance grants in ancient times impartible and inalienable. Hereditary maintenance grants have incidents of joint family partible ancestral property. Grant in lien of specific sum, separate property. Maintenance grants how far liable for debts of a holder. Creditor of a son can attach his share. Grantee has no mineral rights. Maintenance grants void after death of grantor. Acceptance of rent is not recognition of the permanency of a lease by a grantee. Notice by a grantee that his grant is permanent would not make his possession adverse. How far assertion of superior status creates adverse title ... ... Pp. 129—146.

SECTION III.

Military and Fundal tenures.

Orissa chiefs. Tekaits of Chotanagpur, Polliams of Madras. Dayadi Pattam of Madras ... ... Pp. 146—150.

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SECTION IV.

Jagirs, Vatans, Saranjams, Inams and other service tenures.

The system in ancient times. Jagir, Saranjam and Inam. Ordinarily grants of revenue but may convey proprietory rights to the soil. Colonel Etheridge's description of Saranjams and Jagirs. Saranjams impartible, eldest son being manager but others entitled to shares of profit Vatans. Nature of the estate of a Vatandar before 1827. English legislation about Vatans. Do Vatan lands become alienable when services are abolished. Family custom may bind successor even after abolition of services. When office ceases tenure ceases. Settled lands free from official obligation. Does abolition of services subsequent to alienation destroy rights of heirs. Vatans partible but may be impartible by custom. Partition of Vatan allowed subject to the right of Desai to receive the income out of it for the performance of duties. After commutation becomes partible and alienable. Gordon Settlement. Did not become partible alienable property. Mortgages and leases inoperative beyond lifetime. Females postponed to males. A widow once adopting can not adopt again. Inams of Madras. Bhattavartti Inams. Law about service Inams Original status of Inamdars. Legislative provisions about Inams. Enfranchisement of service Inams and rights of family members. Inam lands attached to offices inalienable. Resumption of Service Inams. Resumption of Mokhasa grants. Resumption of grants subsequent to permanent settlement ... ... Pp. 150—182

SECTION V.

Ghatwali, Digwari and other tenures for Military and Police Service.

History of Ghatwallis. Ghatwalis of Beerbhoom—their incidents. Whether they are hereditary. Ghatwalis are impartible. Birbhum Ghatwalis heritable, and inalienable. Principle of succession. Succession not limited to heirs of the body under Reg. 29. How far attachable in execution. Surplus profits attachable. Beerbhoom Ghatwal's power to grant permanent leases. Rights to compensation money. Rights of enhancement and ejectment by Revenue-sale-purchaser. Digwars of Chotanagpur. Rights to minerals. Power of appointment and dismissal. Right of dismissal in Bankura. Kurruckpur Ghatwalies of Bhagalpur, their incidents. They

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are dependent Taluks and cannot be annulled. Ghatwalis impartible governed by rule of primogeniture. Not joint ancestral property nor governed by Mitakshara. Shikmi Ghatwalis their incidents. Ghatwalis of Bankura—their incidents. Whether permanent and heritable. Magistrates power of dismissal and appointment. Digwaris of Bankura and Manbhum. Jagirs and Ghatwalis of Burdwan, Pachete and Midnapur. Power of Government of appointment and dismissal. Jurisdiction of Civil Courts. Limitation for suits for declaration in case of wrong order of resumption ... ... Pp. 183—209

Resumption of Ghatwali and other service tenures.

Jaigirs and service tenures though originally lifegrants when hereditary. Principles governing resumption. Right of Government to resume Chowkidary Chakran or other Service Inam. Right of the Zemindar to resume. Ghatwalis and hereditary service tenures not resumable when service not refused. Grants in lieu of wages resumable. Not resumable at option when on condition of Service. Principles recently laid down at Calcutta. Resumption when service unnecessary. Right to refuse service by lapse of time. When character of service tenure lost inalienability ceases. Acquisition of right of permanence and alienability by adverse assertion ... ... Pp. 209—214

SECTION VI.

Tarawads of Madras and Customs of the Illuvans and Tiyars.

Description of Tarawads. Marumakkathiyam. Karanavans, whether they can have separate property. Impartibility of Tarawads and other incidents. ... ... Pp. 214—220

LECTURE IV.

Succession.

Early history of kingship and its devolution. Whether the early king was a priest. Impartibility not an original incident of kingdoms. Divine character of kingship. Rules of the Smritis. Rules of succession according to Puranas and Niti Shastras. Rules of succession according to decisions. Lineal or representative primogeniture and primogeniture of proximity. History of the rule of primogeniture. Evolution of the rule of representative primogeniture. Lineal primogeniture how far prevalent. Settled rule that lineal primogeniture applies to direct male descendants. Rule as regard collateral succession. General rule of succession to impartible

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property. The right of sons and other direct male descendants. Right of the adopted son who can not take when there is a direct male descendant. Adopted son can divest brother. Rule of Tanistry in certain estates. Right of widows and daughters. Senior widow succeeds. Right of daughter—eldest succeeds. Rights of daughters' sons—eldest succeeds. Right of brother. Daughters and daughter's sons in Northern India. Right of the mother, stepmother and adopting mother and grand-mother. Limited interest of females. Female heirs succeed to Ghatwali. Female heirs succeed to Polliams. Full brother's preferential right. Illegitimate brother among Sudras may take by survivorship. Devolution governed by the rule of succession of particular Schools. Widows may succeed by custom. Custom in Tippera Raj. Succession in Oude Taluks. All descend to single heir and are alienable by sale, gift and will. Ordinary law under the Act includes custom. Female heirs take limited estates. Whether right to maintenance is interest under Sec. 13. Subsequent insanity does not divest. Law in Orissa. Succession in Garjats of Orissa. Succession in impartible estates in Chotanagpur. Custom of appointing Yuvaraj. Custom of abdication. Succession to Vatans. Succession to Madras Karnams. Succession in Madras Tarawads. Succession in Tarawads Disqualification to succession as Karanavan. Adoption under the Malabar Law. Nambudri Illums. Succession in Dayadi Pattans. Succession in Muhammadan impartible estates. Kunjapura reasut. Tank reasut. Muhammadan Oude Talukdars. Succession in feudatory States. Succession after regrant and resettlement. Succession in Ramnad estate. Succession in Shivagunga. Succession in Hansapore Raj. Succession in Bettia Raj. Udayapura Palayam. Succession in Nuzvid estate. Succession in Nadadavolu estate. Succession in Belgam estate. Mirangi Zemindary. Principles governing cases of regrant. Effect of renunciation. Effect of migration. Succession to accumulations and accretion. Decisions of the Privy Council on accumulations of moveables. Decision of the Privy Council on accretions ... ... Pp. 221—299

LECTURE V.

Judicial Proceedings about Impartible States.

JURISDICTION, EVIDENCE OF CUSTOM, LIMITATION RESJUDICATA.

(a) Jurisdiction.

Jurisdiction about succession to feudatory States. No jurisdiction to entertain suits relating maintenance of members of family of heads of

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Native States. No jurisdiction to question propriety of acts of Government in its sovereign rights. When and how can acts of Government be questioned. Jurisdiction of Civil Courts about resumption, appointment and dismissal in respect of Vatans, Ghatwalis, Inamdars etc. Pp. 299—305

(b) Custom and its evidence.

Custom, ancient Hindu Law about custom. Mimansa or custom rules of Smritis on custom. Blackstone on custom. No presumption that large estates are impartible. Effect of the Regulations. Rule laid down by the Privy Council. Small estates may be impartible by custom. Custom of impartibility of three kinds. Family Custom may be put an end to. What is immemorial custom. Essential attributes of customs. Burden of proving custom. Burden of proving discontinuance of custom. Question of custom of impartibility. Mixed question of law and fact. Admissible and sufficient evidence of custom. Oral evidence. Hearsay. Statements of deceased persons. Historical accounts, books and records. Custom how proved. Custom and the Oude Act. Custom not excluded by the Act. ... ... Pp. 305—335.

(c) Limitation.

Adverse possession for 12 years. Adverse possession in the case of joint family estates. What constitute exclusion Limitation in case of usurpation. Possession of a widow when there is no right of female succession whether adverse. Remedy in case of possesion for 12 years by an alienee of inalienable Vatan. Limitation in case of alienation. Limitation in case of possession by females under Oude Act. Limitation in case of unauthorised tenure. Limitation in case of leases of inalienable estates. Limitation in suits for maintenance ... ... Pp. 335—345.

(d) Procedure in claims about maintenance.

Maintenance may be decreed in suit for possession. Past maintenance decreed in suit for declaration. Decree should direct payment of future maintenance which can be realized in execution. Mesne profits not allowed, when maintenance not offered. Maintenance may be allowed pending suit. for partition ... ... Pp. 345—347.

(e) Resjudicata.

When are decrees against holder *resjudicata* against successor. Compromise decrees how far binding. Execution of compromise decree against successor ... ... Pp. 347—362

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APPENDIX.

Regulations about Impartible Zamindaries.

REGULATION XI OF 1793.

Descent of landed property after 1st July 1794. Estate how to be held on death of actual proprietor. Manager to be appointed to shares held in joint property. Shares held separate how to be assessed. Commencement and operation of regulation. Saving of bequests and transfers ... ... Pp. 362—367

REGULATION X OF 1800.

Regulation XI of 1793 not to operate in jungle mehals of Midnapore and other Districts ... ... Pp. 367—368

Regulations and Acts about Ghatwalis.

REGULATION XXIX OF 1814.

Ghautwauls in Beerbhoom and their descendants in perpetuity, to be maintained in possession of their lands and not liable to enhancement of rent. Ghautwaulee lands to form part of Zemindary of Beerbhoom and the rents how to be paid. Amount payable to the Zemindar of Beerbhoom. On failure of Ghautwauls to discharge their stipulated rents, their tenure how to be disposed of ... ... Pp. 369—371

ACT NO. V OF 1859.

Preamble. Ghatwals of Beerbhoom to have the same right of granting leases as is allowed to other proprietors of land. Proviso. Court of Wards and Revenue authorities to have the like power in certain cases Pp. 371—373

The Bengal Settled Estates Act 1904.

PART I.

Preliminary

Short tittle and extent. Definitions ... ... Pp. 374—377

CENTRAL LIBRARY

PART II.

Applications for permission to make a First Settlement of an Estate. Who may apply for permission to settle an estate. Signature, verification and contents of an application. Declarations and draft to accompany application in the case of an estate belonging to a joint Hindu Family or to co-sharers. Power to reject application. Transmission and notification of application. Rejection or approval of application after notification. Rejection no bar to making fresh application ... Pp. 377—384

PART III.

Provisions to be contained in First Settlements.

Settlement of estates for three generations. Further remainders. Further provisions in settlements ... ... Pp. 384—389

PART IV.

Supplementary settlements and fresh settlements.

Supplementary settlement in respect of property. Power to apply for permission to make a supplementary settlement in respect of persons. Power to apply for permission to make a fresh settlement. Procedure in dealing with applications under Section 14 or 15. Provisions as to fresh settlements ... ... Pp. 389—394

PART V.

Settlements Generally.

Approval, stamping and registration of settlements. Approval, stamping and registration of instruments of surrender, Bar to application of succession laws, in respect of property comprised in settlement. Power of Local Government to grant certificate after death of tenant for life. Notification of instruments of settlement and instruments of surrender or revocation of settlement. Abrogation of inconsistent laws

Pp. 394—398

PART VI.

Revocation, Cancellation and Amendment of Settlements.

Revocation of settlement by tenant for life cancellation or amendment of settlement by Local Government. Revival of incumbrances on revocation, cancellation or amendment of settlement ... Pp. 398—400

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PART VII.

Rights and Powers of Tenant for Life and Protection of Settled Estates during Life.

Right of tenant for life to profits of settled estate. Restriction on alienation by tenant for life. Sales by tenant for life. Leases by tenant for life. Saving of leases by raiyati holdings. Bar to sale of settled estate in execution of decree. Sale of settled estate for arrears of land revenue etc. Procedure for recovery of such arrears ... Pp. 400—407

PART VIII.

Miscellaneous.

Form, publication and duration of permissions granted by Local Government. Notifications how to be published. Power to make rules. Application of Court of Wards Act 1879, Saving of rights of secured creditors ... ... Pp. 407—409

ACTS ABOUT VATANS.

Bombay Act No. III of 1874.

PART I.

Preliminary.

Short title. Interpretation clause ... ... Pp. 409—412

PART II.

Watan Property and Profits thereof.

Prohibition of alienation of Watan and Watan rights. Collector may institute legal proceedings for protection of Watan. Collector may proceed under section 8 to 11 or 13. Watan assigned as remuneration not alienable without sanction. Watan property passed into possession of person other than officiator liable to contribution for remuneration of officiator. Collector may declare alienation of watan-property to be, under certain circumstances, Null and void. Collector may in case of land recover full rent. Civil Court on Collector's certificate to remove attachment on Watan-property assigned as remuneration of Officiator. Collector may declare null and void alienation of Watan-property made after passing of Act. Resumption of property to which an order made

CENTRAL LIBRARY

under section 10 or section 11 applies. Powers of Collector to carry out provisions of sections 8, 9 and 11. Watan assigned as remuneration not liable to process of Court. Combinations of hereditary offices

Pp. 412—418

PART III.

Commutation of Watans

Commutation of service. Settlement on whom to be binding. Who is a "holder." Rights of individuals to exact customary service from village servants not affected. Assignment of amount of payments in alienated villages. Appointment of Panchayat to define rights and duties of certain classes of Watandars Mode of fixing amount payable when profits of Watan fluctuate. Validity of settlements made prior to passing of Act. Settlements for such period as Government may direct ... Pp. 418—421

PART IV.

Creation and Lapse of Watans.

Creation of new Watans ... ... Pp. 421—422

PART V.

Remuneration of Officiators.

Collector to fix emoluments of Collector may assign Watan property for this purpose ... ... Pp. 422—423

PART VI.

Representative Watandars.

Dutes to be performed by representative Watandars Determination and registration of representative Watandars Previous practice to be considered in determining who are representative Watandars. Registration of head of family as sole representative Watandar. Registration of heads of families as representative Watandars. Registration of head of eldest family as sole representative Watandar. Registration of heads of separate families as representative Watandars. Registration as representative Watandar of head of each family in amalgamated Watan. Procedure if heads of families agree as to who are representative Watandars. Right of service to remain after relinquishment of property. Notice of adoption if heir has been adopted prior to passing of Act. Notice of adoption when

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ADVANCEMENT OF LEARNING
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heir adopted after passing of Act. Procedure of notice of adoption not duly given. Death of representative Watandar to be reported: name of heir to be registered ... ... Pp. 423—427

PART VII.

Periods of Service.

Representative Watandars to serve for life or for fixed periods of five or ten years. Procedure on death of officiator: Election of officiator in rotation Watan, mode of appointment if representative Watandars fail to nominate officiator ... ... Pp. 427—429

PART VIII.

Officiating Watandars and Deputies.

Representative Watandar to perform duties of office.. Collector to determine member of officiator required. Collector to appoint deputy if Watandar fails. Collector when to refuse service of representative Watandar or deputy nominated by him. Procedure when representative Watandar or his deputy is unfit to officiate. On cessation of disqualification, representative Watandar entitled to serve. Second nomination of deputy. Representative Watandar may officiate for deputy removed. Collector may nominate deputy if representative Watandar rejected or removed. Female cannot officiate but may nominate deputy. Collector to appoint deputy when officiator suspended. Deputy must ordinarily be a member of the same family as the representative Watandar whose duty it is to officiate. Term of appointment of deputy. Officiator if absent or ill may appoint substitute. Head of family when to be treated as Watandar ... ... Pp. 429—434

PART IX.

Penalties.

PART X.

Inferior Village Hereditary Offices.

Application of Part X. Powers granted to Collector ... Pp. 434—438

PART XI,

The Register.

Collector to prepare and keep register. Non service register what to contain. Service register what to contain. Registered to be corrected. Pp. 438—440

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PART XII.

Miscellaneous.

Service to be performed by Watandars. Watan records the property of Government. Watandars may sign village records ... Pp. 440—441

PART XIII.

Procedure and Appeals.

Evidence to be taken. Orders under Parts III, V, VI and VII to be passed under investigation in writing. Certain decisions passed since 1866 to be accepted in lieu of fresh investigation. Control of proceedings of Collectors. Mamlatdar may make investigations under Part X. No appeal to lie save where specially provided. Appeals, copy of order to accompanying petition of appeal. Appeal may be summarily rejected. Government may call for proceedings. Notice how to be served. Recoveries how made. Government to frame rules. Government to determine duties of hereditary officers. Grant of powers to special officers. Act not to affect Bombay Act VIII of 1867 ... Pp. 441—446

Bombay Act No. V of 1886.

Female members to be postponed. Widow's interest Amendment of section 10 ... ... Pp. 446—447

MADRAS ZAMINDARY SETTLEMENT.

Madras Regulation XXV of 1802.

(*The Madras Permanent Setflement Regulation of 1802*).

Assessment on all lands liable to revenue. Proprietory right vested in Zamindars. Instruments to be granted Zamindars. Corresponding Kąbųliyats. Cases of disputed assessment. Articles of revenue which Government reserves right of abolishing or continuing. Land tax to be permanently fixed exclusive of these articles. Police expenses to be borne by Government. Land appropriated to this purpose to be resumed. Amount of assessment to be regularly paid. No remission of revenue to be allowed. Landholders property answerable for consequences of failure. Their personal property to be attached in the first instance Proprietors of

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land may transfer proprietory right in whole or part of their Zamindaries. Restrictions under which such transfer is to be made. Accounts to be furnished in forming part of Zamindari into separate estate. Principle regulating assessment on part separated. Number of Karnums to be kept up to be appointed by Zamindars. Procedure against Karnams in cases of complaint. Appointment of successor to Karnam dismissed from office. No part of an estate permanently assessed can be exempted from bearing its portion of public tax. Lands allotted to religious purposes. Where consent is obtained assessment on such lands to be paid as fixed by collector. Zamindars to engage with raiyats, to grant pattas and to give receipts for rents. Zamindars refusing to give pattas or receipts, liable to be sued. Zamindars to assist in keeping the peace . . . Pp. 448—456

ACTS ABOUT INAMS AND VILLAGE OFFICES.

Madras Act No. III of 1895.

(*The Madras Hereditary Village Offices Act, 1895*)

Preamble. Title commencement and extent. Repeal Amendment of Act XXIV of 1859. Amendment of Madras Act II of 1894. Cases of village offices to which Act applies. Definitions. Emoluments attached by State to certain offices inalienable and not liable to attachment. Villages may be grouped or divided. Effect of grouping or dividing on village offices. Reduction of village offices in government villages and proprietory estates. Proviso. Power of Tahsildars and Deputy Tahsildars over village officers in government villages. Power of proprietor over officers in proprietary villages. Limitation of power of Collector over certain officers in proprietary estates. Rules to be observed in making appointments to certain offices in government villages. General qualifications requisite in all cases. Primogeniture to be observed. In certain cases persons other than direct heir may be appointed. Temporary disqualification of heir in certain cases. Procedure to be adopted where heir is a minor. Method of filling up vacancy caused by resignation, dismissal, removal or suspension. Rules to be observed in proprietary estates. General qualifications requisite in all cases. Law or custom of succession to be observed In certain cases persons other than direct heir may be appointed. Procedure to be adopted where heir is a minor. In case of village artisans law or custom

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of succession to be observed. Provisions relating suits for offices for recovery of emoulments and for registry as heir. No suit for declaratory decree. Procedure in case of dispute as to nature of emoluments. Rejection of plaint when claimant is ineligible for appointment. Limitation of time within which suits may be brought. Limitation in case of minority. Limitation of time within which execution of decree or order may be applied for. Execution of decrees and orders passed under Regulation VI of 1831. Limitation when appeal preferred. Power of District Collector in regard to transfer of suits. Procedure to be observed in trying suits. Date of hearing to be fixed and parties to be heard. Witnesses may be produced or summoned. Record of proceedings. Obligation to obey summons. Decrees may provide for costs and shall be executed according to rules made by Board of Revenue. In certain cases collector may refer questions of law to Board of Revenue. Procedure to be followed in cases of such reference. Decision of Board of Revenue not to be contested. Disposals of suits and appeals pending at commencement of this Act. Board of Revenue may make rules on certain subjects. Jurisdictions of Civil Courts barred. Proviso empowering the Civil Courts to set aside the decisions of Revenue Courts on the question of jurisdiction. Nothing in this Act to prevent recovery of emoluments as arrears of revenue or to affect office which is not now hereditary. Appeal against order or decree of Collector. Second appeal in certain cases. Appeals against order of Tahsildar or proprietor. Disposal of appeal by officer who passed original order. Certain provisions of Limitation Act to apply. Power of Government to place village watchmen under police authorities. Pp. 457—476

Madras Act No. IV of 1862.

(*The Madras Enfranchised Inams Act, 1862*).

Preamble. Evidence of enfranchisement ... P. 477

OUDH TALUKDAR'S ACT.

ACT NO. I OF 1869

An Act to define the rights of Taluqdars and others in certain estates in Oudh and to regulate the succession thereto.

Preamble ... ... P. 478

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

I. Preliminary.

Short title. Extent of Act. Interpretation Clause ... Pp. 478—480

II. Rights and Liabilities of Taluqdars and Grantees.

Taluqdars to have heritable and transferable rights in their estates. Subject to certain conditions. Rights and liabilities of persons named in second schedule. Grantee's rights and liabilities. Saving of certain redemption suits. Heirlooms. ... ... Pp. 480—482

III. Lists of Taluqdars and Grantees.

Preparation of lists of taluqdars and grantees. Publication of lists. Supplementary lists. None but persons named in the lists to be deemed Taluqdars or Grantees. ... ... Pp. 483—484

IV. Powers of Taluqdars and Grantees to Transfer and Bequeath.

Taluqdars and Grantees may transfer and bequeath. Rule against perpetuity, Restriction as to donees and legatees. ... Pp 485—487

V. Transfer and Bequest.

Transfer and bequests to Taluqdars and heirs. Transfers and bequest to persons out of line of succession. Transfers to be in writing, signed and attested. Further requisites to validity of gifts inter vivos. Gifts to religious or charitable uses. ... ... Pp. 487—489

VI. Testamentary Succession.

Sections of Succession Act applied to wills of Taluqdars. Bequests to religious and charitable uses. ... ... Pp. 489—490

VII. Intestate Succession.

'Son,' 'descendants,' 'brother,' 'widow,' defined special rules of succession to intestate Taluqdars and Grantees. General rule of succession to intestate Taluqdars and Grantees. ... ... Pp. 490—493

VIII. Maintenance.

Maintenance of surviving relatives of Taluqdars and Grantees. Grandparents, parents and senior widows. Junior widows. Brothers and minor sons, Nephews. Unmarried daughters, widows of sons and brothers and inferior widows. Continuance of annuities. ... ... Pp. 493—496

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

IX. Miscellaneous.

Muhammadan Taluqdars and Grantees empowered to adopt. Alteration of rules of intestate succession in cases of Taluqdars and Grantees named in list 3 or list 5. Reverter to ordinary law of succession. Saving of rights of creditors. Award as to compensation and maintenance. ... ... Pp. 496—498

Second Schedule ... ... Pp. 498

Regulation XI of 1816. ... Pp. 499—507

Record of Customs of Orissa Impartible Rajes and Estates.

Pucchees Sawal or Twenty five question addressed to the Rajas and Chiefs of the Regulation and Tributary Mehals by the Superintendent in 1814 and the answers given there to illustrating the established practice in regard to succession to the Guddee &c.

Part I.

Tributary or non-Regulation Mehals ... ... Pp. 508—518

Part II.

Tributary or Regulation Mehals ... ... Pp. 518—526

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

CENTRAL LIBRARY

UNIVERSITY LIBRARY. LAW COLLEGE.

TABLE OF CASES.

PAGE.

Abergavenny Estates Case L. R. 7 Ex. 145 168
Aberdeen Town Council *v.* Aberdeen University L. R. 2 App. Case 544 34
Abhinava Purna *v.* Arni 15 I. C 412 27 Mad. L. J. 79, 5 B. L. R. 50, 9 W. R. 25. 5 Cal. 615, 8 Moor 126 9 Cal. L. R. 379 ... 130
Abraham *v.* Abraham 9 Moor 242 163
Achalram *v.* Udai 11 I. A. 51 237
Adrishappa *v.* Gurushidappa 7 I. A 162 ... ... 164, 169 170
Agar Singji *v.* Bai Namba 28 I. C. 529, 17 Bom. L. R. 273 134, 361
Agin Bindh Upadhya *v.* Raja Mohon Bikram 30 Cal. 29 ... 135
Akanna *v.* Vinkayya 25 Mad 351 296
Alagu *v.* Palaniappa 28 I. C. 278, Mad. N. W. (1915) 221 ... 332
Alymalammal *v.* Venkataramayyan S. D. A. Decisions Mad. 1844 P. 83 272
Amar Singji *v.* Depa Singji 1898 (unr. P. J. 60 at p. 66.) ... 134
Amrita *v.* Shredhara 33 Bom. 317 ... ... 172, 339
Anandlal *v.* Dheraj 5 Moore 82 135
Anunad Kisiory *v.* Baiji Thakurani 21 Cal. L J. 296 120
Asundo Rai *v.* Kali Prasad Sing 15 Cal. 471 P. C. 194
Appaji Bapuji *v.* Keshava 15 Bom. 13 173
Asutosh *v.* Lukhimony 19 Cal. 139 ... ... 134, 347
Avalappa Naicker *v.* Marugappa 36 Mad. 325 126
A. Vissappa *v.* A Ramayagi 2 M. H. C. R. 34 174

B.

Babaji *v.* Nava 1 Bom. 535 ... ... 341, 348
Babu Beer Pertab Shahee *v.* Maharaja Rajendra Pertab Shahee 12 Moore 4 ... ... 96, 131, 286
Babu Gonesh Dutt Sing *v.* Maharaja Mohesher Sing 6 Moore 164 ... 317
Babu Telukdharee Shahee *v.* Maharaja Rajendra Protab Shahee W. R. T. B. 98 286
Bachoo *v.* Mankorebai 29 Bom. 51 257

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

Badu *v.* Hussu Bhai 7 Mad. 236 179
Bhai Narendra *v.* Achalram 20 Cal. 649 ... ... 249, 334
Bai Devokri *v.* Sunmukram 13 Bom. 161 131
Bai Suraj *v.* Government of Bombay 8 Bom. A. C. 88 271
Bally Dobey *v.* Ganei Deo 9 Cal. 388 202
Beer Chander Manikya *v.* Ishan Chander 10 Cal. 135 200
Behary Lalji *v.* Bai Raj 23 Bom. 342 132
Bejoy Gopal Mokerjee *v.* Nilratan Mukerjee 30 Cal. 990 ... 344
Benayak Woman Joshi *v.* Gopal Hari 30 I. A. 77 359
Beni Madhab *v.* Joy Krishna 7 B. L. R. 172 320
Beni Persad *v.* Dudhnath 27 Cal. 156 ... 134, 135, 145, 344
Benode Ram Sein *v.* The Deputy Commissioner of Sonthal Parganas 7 W. R. 178 195
Beresford *v.* Rama Subba 13 Mad. 197 109
Bhabeswar *v.* Rai Babu Ganga Persad 12 C. W. N 966 ... 144
Bhaia Ardwan Sing *v.* Raja Uday Partab Sing 23 I. A. 64 136, 142
Bhagwat Baksh *v.* Sheo 18 C. W. N. 297 ... 136, 139, 145, 211, 213
Bhan Nanaji Utpat *v.* Sundarabai 11 Bom. A. C. 249 ... 166, 318 320
Bhimabai *v.* Tiyappa 37 Bom. 598 174
Bhimapaiya *v.* Ram Chandra 22 Bom. 422 268
Bhya Dirgajdeo *v.* Pandey Fateh Bahadoor Ram 3 Cal. L. J. 521 ... 135
Bijoy Bahadur *v.* Bhupendra Bahadur 24 I.A. 139 159
Bujrange Sing *v.* Manokarnica 30 All I. P. C. 261
Bir Chandra Manikya Bahadoor *v.* Ishan Chander Thakur 3 C. L. R. 417 ... ... 135, 304
Bodlerao *v.* Nursing Rao 6 Moore 426 135
Brendan *v.* Sundar Bai 38 Bom. 27 ... ... 171, 271
Brij Indr Bahadur Sing *v.* Rani Janki Das 5 I. A. I. 1 Cal. L. R. 318 333
Brojo Nath Bose *v.* Raja Sri Sri Durga 14 Cal. 753 affd. 39 Cal. 695 ... ... 136, 199
Budhmal *v.* Bhagwan 18 Cal 302 P. C. 120
Bunkey Case 6 Select Report p. 296 147

C.

Chandi Charan Barrua *v.* Siddeswara 15 I. A. 159, 16 Cal. 71 (Bijni Case) 133

CENTRAL LIBRARY

PAGE.

Chandra *v.* Bramabai 17 Bom. 362 ... ... 172, 339
Chandramma *v.* Vencataraju 8 Mad 226 272
Chandra Seekhur Ray *v.* Nabin Soonder Ray 2 W. R. 197 ... 164
Chandra *v*, Subba 13 Mad. 209 276
Chautarya Run Murdun-Sing *v.* Shahib Perhulad Sing 7 moore 28 131, 132, 331, 346
Chowdhury Chintamoni Singh *v.* Nowlukho Koer 2 I. A. 233 ... 94
Chattradhary *v.* Saraswati 22 Cal. 256 ... ... 194, 195, 262
Cherukomen *v.* Ismala 6 Mad. H. C. 145 278
Chidambaran *v.* Memmal 23 Mad. 439 341
Chintaman *v.* Nawlukho 1 Cal. 153 ... ... 113, 336, 338
Cockburn *v.* Thompson 16 Ves 326 356
Collector of Barelly *v.* William, Macnaghten Vol. II p. 188 ... 135
Collector of Madura *v.* Mootto Ramalinga 12 Moore 397 174, 282
C. Venkanna *v.* M. L. Narayana Sastruhi 2 M. H. C. R. 327 ... 174

D.

Dalpat *v.* Prenja 4 Bom. L. R. 1342 303
Davies *v.* Dabee 18 W. R. 376 ... ... 195, 196
Debee Narain Singh *v.* Sri Kishen 1 W. R. 321 208
Debi Baksh Sing *v* Chandrabhan Sing 32 All. 599, 7 I. C. 724 ... 333
Desai Maneklal Amritlal *v.* Desai Shiwlal Bhogilal 8 Bom. 426 ... 165
Dharampragada *v.* Kadamhari 21 Mad. 47... 180
Doorga Persad *v.* Doorga Keori 4 Cal. 190 P, C. 194, 202, 113, 346
Dosibai *v.* Iswar 15 Bom. 222 P. C. ... 135, 141 156, 211
Durgadut *v.* Rameswar Singh 36 Cal. 943 ... ... 140, 144
Durga Prasad *v.* Brajo Nath 39 Cal. 696 P. C. 144
Dwarkanath Bidyadhar *v.* Dambaradhar Mahapatra 38 Cal. 278 ... 141

E.

East India Company *v.* Sayed Ally 7 Moore 555 ... 303, 304
Ekradeswar Sing *v.* Janeswari 42 Cal. 582 P. C. 137, 139, 298, 299, 330, 346
Emperor of Austria *v.* Day 33 L. J. 690 301

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

F.

PAGE.

Forbes *v.* Mir Mahomed Taquee 5 B. L. R. 540 P. C. 13 Moore 438 ... ... 201, 211, 268

G.

Gannyan *v.* Kamarchi 26 Mad. 347 ... ... 178, 180
Gauri *v.* Chundramma 1 All. 262 131
Gararudwaja *v.* Saparandhwaja 27 I. A. 238, 23 All. 37 321, 329
Ghirdharee *v.* Kolahal 6 W. R. P. C. 1 123
Ghisa Sing *v.* Gajraj Sing 33 I. C. 372, 18 Oude Cases 239 334, 343
Gnana *v.* Velu 27 I. A. 69 341
Golap Chand Babu *v.* Prasanna Kumaree Debia 2 Cal. 86 ... 354
Gonesh *v.* Maheswar 6 Moore 164 267
Gopal Das *v.* Narottum 7 S. D. 198 123
Gopal Hari *v.* Ram Kant 21 Bom. 458 170
Gopal Prosad Bhagut *v.* Raghunath Deb 32 Cal. 158 ... 126, 266
Gopalrao Trumbakrao 10 Bom. 598 276
Governor of Bombay *v.* Damoder Parmanandas 5 Bom. A. C. 702 ... 271
Govindaram *v.* Kunnaram 1 Mad 353 N. A. ... ...
Govind Reddi *v.* Ravi 29 I. C. 1003 154
Grant *v.* Bansideo 15 W. R. 38 ... ... 195, 196
Gunna Singh *v.* Bhagwati 3 I. C. 234 120
Gurupersad Sing *v.* Dhori Rai 38 Cal. 182 124

H.

Hajan Manik *v.* Bursing 11 Cal. 17 ... ... 300, 304
Haji Abdul *v.* Munshi Amir 11 I. A. 121 265
Hankey *v.* Martin (1883) 40 L. T. (N. S.) 500 134
Haripal *v.* Lekhraj 34 All. 65 P. C. 360
Harlal Singh *v.* Jorawan Singh 6 Select Reports 204 Ed. 1873 ... 202
Hazarimal *v.* Abani 17 Cal L. J. 38 144
Hem Chandra *v.* Atul 19 Cal. L. J. 118 209
Himmat Sing *v.* Ganpat Sing 12 Bom. H. C. 94 130
Hur Prasad *v.* Sheo 1876 L. R. 3 I. A. 259 ... 265, 322
Hurrishpur Case 147

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

I.

Page.

Ibrahim Ali Khan *v.* Muhammad Ashanulla Khan 39 I. A. 85 ... 280, 299, 303
Inder Sen Sing *v.* Harpal Sing 34 All. 79 124
In re the Nawab of Surat 5 Moore 499 303
Ishan *v.* Raja Ram Ranjan 2. Cal. L. J. 125 ... 145, 214
Isridutt *v.* Hunsbutty 10 Cal. 324 P. C. 295

J.

Jagadish *v.* Sheo 28 I. A. 100 23 All. 369 ... ... 256, 333
Jivundas Shahoo *v.* Shia Kubeeroodeen 2 Moore I. A. 392 ... 354
Jivi *v.* Ramji 3 Bom. 207 345
Jivatbhat *v.* Anibhat 22 Bom. 259 336
Jagantir *v.* Villangama 12 Mad. L. J. 270 132
Jogendra *v.* Fulkumary 27 Cal. 77 ... ... 131, 132
Jogendranath Sing *v.* Kali Charan Ray 9 C. W. N. 663 208, 212
Jokha Singh *v.* Musamul Dulari 11 Oude Case 313 296
Jowala Buksh *v.* Dharum Singh 10 Moore 333 89

K.

Kachi Kaliyana *v.* Kachi Yuva 27 Mad. 508 ... 149, 317
Kachi Yuva Rangappa *v.* Kachi Kaliyana 28 Mad. 508 P. C. ... 116, 131, 248, 250, 251, 287
Kali Krishna Sarker *v.* Raghunath Deb 31 Cal. 224 ... 125, 252
Kali Pershad *v.* Anand Roy 15 Cal. 471 P. C. 194
Kalu Narayan *v.* Hadmapabin Bhamapa 5 Bom. 435 336
Kamaramtu *v.* Raja of Pittapuram, 26 I. C. 78 Mad. W. N. (1914) 936 ... ... 182, 211, 213
Kanaran *v.* Kungan 12 Mad. 307 ... ... 220, 275, 276
Kandappa A. Chary *v.* P. Vengama Naidu 37 Mad. 548 ... 181
Kapil Nath *v.* Government 22 W. R. 17 94
Karim Nensey *v.* Heinrich 25 Bom. 573 136
Kasinath *v.* Uthumana 12 Mad. L. J. 1 296
Kathama Natchiar *v.* Dorasinga 6 Mad. H. C. 310 259
Keval Kabu *v.* The Talukdari Settlement Officer 1 Bom. 586 ... 163
Kinloch *v.* Secretary of State 15 Ch. Div. p. 8 33
Kondi Menon *v.* Strangenagatta 1 Mad. H. C. 246 220

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

Kooldeep *v.* Government 14 Moore 247 ... 136, 193, 201, 21[illegible]
Krishnaji *v.* Vethalrav 12 Bom. 80 268
Krishnanoma *v.* Papa 14 Mad. H. C. 234 272
Krishnarav Gones *v.* Rangrao 4 Bom. H. C. p. 12 ... 158, 168, 169, 268
K. S. Wahid *v.* Tori Ram 35 All. 551 296
Kula Chandra *v.* Bama Sundari 22 I. C. 70 296
Kumar Hari Narayan *v.* Sri Ram 14 C. W. N. 746 P. C. ... 144
Kunigaratu *v.* Arangaden 2 Mad. H. C. 12 219
Kuria *v.* Gururao 9 Bom. H. C. 282 ... ... 159, 160, 350
Kusal Chand *v.* Mahadevagiri 12 Bom. H. C. 214... 354
Kustoora Kumari *v.* Benoderam Sen 4 W. R. 5 Mis Contra. 9 Cal. 388 195
Kustoora Kumari *v.* Monohur Deo W. R. p. no p. 30 Affd. 9 Cal. p. 206 P. C. 270

L.

Lakhan Goala *v.* Keshav 28 Bom. 305 ... ... 210, 211
Lakshmi Narayana Ananga *v.* Durga Madhava Deo 6 Mad. 268 20 I. A. 17 133
Lakshman *v.* Narayunrao 14 Bom. 82 268
Laksmipathi *v.* Kundaswami 16 Mad. 54 ... ... 131, 297, 299
Lal Bahadur *v.* Seo Narayun 22 I. C. 903 266
Laliteswar Sing *v.* Rameswar Sing 36 Cal. 481 ... 114, 116, 126
Lalla Gooman Singh *v.* Grant 11 W. R. 292 201
Lall Dharee Roy v. Brojolall Singh 10 W. R. 401 ... 200, 207
Leelanund *v.* Monoranjan 3 Cal. 251 ... ... 193, 201, 211
Leelanund Singh *v.* Durgavatty W. R. p. No. p. 249 201
Leelanund Sing *v.* Nassul Sing 6 W. R. 80 192
Leelanund Singh *v.* The Government 6 Moore 101 200
Lloyd *v.* Johnes 9 Ves pp. 56-57 356
London Corporation *v.* Cox (1867) L. R. 2 H. L. 239-259 ... 322
London and South Western Railway *v.* Blackmore (1870) 4 H. L. 623 361
Luchmeeput *v.* Sadaulla (1882) I. L. R. 9 Cal. 698 322
Luchminarain Sing *v.* Gibbon 14 W. R. 197 267

CENTRAL LIBRARY

PAGE.

Luchmuna Row *v.* Perimul Row 4 Mad. Jur. 241 129

M.

Madhava *v.* Narayana 3 Mad. 249 341
Madhusudan Sing *v.* Rooke 24 I. A. 164, 25 Cal. 344
Magan Chand *v.* Vithalrav 37 Bom. 37 172
Mahabub Hossein *v.* Patusi Kumary 10 W. R. 179 ... 192, 200
Mahadevi *v.* Vikrama 4 Mad. 365 210
Mahalakshamma *v.* Vencata 6 Mad. 83 131
Mahamaya Debi *v.* Haridas Haldar 20 Cal L. J. 192, 194 ... 321
Maharaja of Bobbili *v.* Kaminayani 35 Mad. 108 125
Maharaj Kumar Jagat Mohun *v.* Brenda 1 Cal. L. J. 557 ... 139
Maharaju Lungaru *v.* Virapratapa 5 Mad. H. C. 31 129
Maharana Fateh Singji *v.* Kunwar Hari Sing 20 Bom. 187 ... 130
Maharanee Indra Kunwar *v.* Maharanee Jaipal Kunwar 15 Cal. 725
P. C. 265, 346
Mahomed Hossein *v.* Mahomed Nehluddin 13 Cal. L. R. 330 P. C. 132
Mahesh Pertap *v.* Birgopal 21 All. 232 133
Mahesh Chunder *v.* Satrughan Dhal 29 I. A. 62, 29 Cal 343
250, 252, 327
Makhi *v.* Keleth 16 Mad. L. J. 273 219
Malgaudi Paragunda *v.* Babaji 37 Bom. 107 174
Maharanee Shibesouree Debia *v.* Mathooranath Acharj 13 Moore 273 354
Mallikarjuna *v.* Durga 17 Mad. 362 appd. 24 Mad. 147 P. C. 337, 345
Mallikarjuna *v.* Durga 13 Mad. 406 318
Manorunjan Sing *v.* Leelanund Sing 13 B. L. R. 124 198
Mana Vicrama *v.* Rama Patter 20 Mad. 275 141
Manohar Ganes Tambekar *v.* Laksmanram Govindram 12 Bom. 247 33
Mangal Chand *v.* Vithalrav 37 Bom. 37 ... ...
Manohar Gones Tambekar *v.* Lakhmanram Govindram 12 Bom. 247 33
Mathusawmy Naeck *v.* Bangaramal 8 I. C. 332 9 Mad. L. T. 39 150, 276
Mayaram Sevaram *v.* Jayvantrai Pandurang (Printed Judgments for
1874 p. 41) 347
Mercer *v.* Denne, 2 Ch. 55 16 322
Mirabivi *v.* Villayanna 8 Mad. 46 332

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

PAGE.

Muttu Vaduganadha Tevar *v.* Dora Singa Tevar 3 Mad. 308 ... 289
Muhammad Afzal Khan *v.* Ghulam Kashim Khan 30 Cal. 843 ... 200
Muhammad Imam Ali Khan *v.* Hasan Khan 29 Cal. 81 P. C. 249, 251
Mukurbharoo Deo *v.* Kastoora Kunwari 5 W. R. 215 202
Munsi Ram *v.* Ganda Mal 26 I. C. 90 120
Murari *v*, Mukund 15 Bom. 201 120
Mussamat Jamna *v.* Chuni 4 Punjab 329 331
Mussamat Kastura Kumaree *v.* Manohur Deo Cal. W. R. 1864 p. 39 162
Muttuvadugaadha *v.* Periasami 16 Mad. 11 appd. 19 Mad. 431 P. C. 248, 250, 251, 260, 263
Muttu Vaduganatha *v.* Dora Sing 8 I. A. 99 ... 121, 259
Muttayan Chettiar *v.* Sagili Vira Pandia Chinatambier Pandia 9 I. A. 144 353
Muttusawmy *v.* Vencatasawmy 12 Moore 203 130

N.

Nachiappa *v.* Chinnasami 29 Mad. 453 ... ...
Nambiatan *v.* Nambeatan 2 Mad. H. C. 284 278
Nandalal *v.* Lloyd 22 Cal. W. R. 74 Civ. Rul. 352
Naraganti Achammagaru *v.* Venkata Chalapati 4 Mad. 250, 266 237, 248, 250, 251, 263
Naragan Gop Habbu *v.* Pandurung Ganu 5 Bom. 685... ... 348
Narain Khootia *v.* Lokenath Khootia 7 Cal. 461 100
Narain Mullik *v.* Badi Roy 29 Cal. 227 ... ... 195, 196
Narasinha Charlu *v.* Srinivasa 6 Mad. L. J. 119 ... 179
Narasinha *v.* Vaman 34 Bom. 91 ... ... 172, 339
Narasinha *v.* Vencatarao 34 Bom. 91 173
Narayan Jagannath Dikhit *v.* Vasudeo Vishnu Dikhit 15 Bom. 247 357
Narendra *v.* Achal Ram 20 I. A. 77 251
Neel Kristo Deb Burmano *v.* Beerchunder Thakoor 12 Moore 523 94, 129, 240, 254, 262, 302
Nilmony Sing v. Bukronath 9 Cal 187 P. C. ... 195, 207
Nitra Pal *v.* Jay Pal 19 All. 1 24 I. A. 147 318
Nittanund Murdiraj *v.* Sreekurun Jaggernath 3 W. R. 116 ... 147

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

Nobodip Chunder *v.* Raja Bir Chunder 25 W. R. 404 302
Nurgunty Lutchmee Dasamah *v.* Vinguma Naidoo 9 Moore 86 ... 150

P.

Padapa *v.* Swami Rao 24 Bom. 556 P. C. ... 170, 172, 173, 339
Panchanandeyyan *v.* Nelkandeyyan 7 Mad. 191 135
Parameswaram *v.* Krishnan 26 Mad. 535 ... ... 145, 214
Parbati Kunwar *v.* Chandrapal 31 All. 543 .. 260, 364
Parvati *v.* Jagadish 20 Cal. 483 P. C. 29 I. A. 82 ... 129, 299
Parvati Nath Dutt *v.* Rajmohon 29 Cal. 367 209
Parvati *v.* Ramchandra 7 Mad. L. J. 279 219
Parikood Case 147
Pateswar Protap *v.* Rudra Narayan 1 All. L. J. 543 293
Parthasarathi *v.* Secretary of State 38 Mad. 620 211
Pedda Ramapper *v.* Bengari 18 I. A. 256
Pengala *v.* Bommereddipali 30 Mad. 436, 32 Mad. 8, 6 ... 180
Periasami *v.* Periasami 5 I. A. 61 95
Perkash Lal *v.* Rameswar 31 Cal. 561 137
Phillips *v.* Hudson L. R. 2 Ch. App. 243 352
Pirojshah *v.* Manibhai 13 Bom. L. R. 955 359
Pitam Singh *v.* Ujagar Singh I. L. R. 1 All. 151 348
Prandhan Roy *v.* Ramchandra Magraj 1 Sudder Rep. 1861 p. 16 ... 147
Prem Chand *v.* Hoolas Chand 12 W. R. 494 130
Prince Mahomed Buktyar Shah *v.* Rani Dhojamani 2 Cal. L. J. 20 144
Prosonno Coomari Debia *v.* Golap Chand Baboo L. R. 2 I. A. 150 354
Purna *v.* Radhakissen 31 Cal. 478 131
Pyke *v.* Crouch 1 Lord Rayan 730 353

R.

Radha Prosad Sing *v.* Budha Doshad 22 Cal. 938 P C. 157, 210
Radhabai *v.* Anantrav Deshpande 9 Bom. 198
158, 268, 298, 335, 340, 347, 361
Radhabai *v.* Ramchandra 9 Bom. 198 269
Raghubans *v.* Bhagwat 21 All. 183 346
Raghuji Rao Shaheb *v.* Lakshman 36 Bom. 639 P. C. ... 122, 156
Raghunath *v.* Moharaj 11 Cal. 777 P. C. 336

CENTRAL LIBRARY

PAGE.

Raghunath Prosad *v.* Kuniz Rasul 24 All. 467 209
Rahim Khan *v.* Dadanuya 34 Bom. 101 ... ...
Raja Deedur Hossein *v.* Ranee Zuhooroon-Nissa 2 Moore 441 318, 325
Raja Udaya Aditya Deb *v.* Jadav Lal Aditya Deb 8 I. A. 248 ... 110
Raja Durga Prasad Sing *v.* Braja Nath Bose 16 Cal. W. N. 487 ... 206
Rajah Yanumula Venkayanah *v.* Rajah Yanumula Boochia Vankordora 13 Moore 333 96
Raja Jenarden Ummur *v.* Okhoy Singh 1835 6 Select Rep. p. 42 (Dhekannal) 147
Raja Leelanund Sing Bahadur *v.* Thakur Manoranjan Singh L. R. I. A. Sup. 18 163
Raja Lelanand Sing *v.* The Government of Bengal 6 Moore p. 102... ... ... 182, 192
Raja Narsing Deb *v.* Ray Kailash Nath 9 Moore 35 143
Raja Nilmoni Singh *v.* Bokronath Singh L. R. 9 I. A. 104 ... 168
Raja of Kalahasti *v.* Achegadu 30 Mad. 454 124
Raja of Patkum 5 Cal. 113 8 I. A. 248 100
Raja Rameswar *v.* Arjun 28 I. A. 1 135
Raja Ramnarayan Singh *v.* Petum Singh 11 B. L. R. 397 ... 94
Raja Rup Sing *v.* Rani Baisni 11 I. A. 154 ... 94, 336
Raja Sham Soonder Mahendar *v.* Kishen Chunder Bewarlah Rai 4 Select Rep. 39 147
Raja Suraneni Venkato Gopala Narasinha Raw Bahadur *v.* Raja Suraneni Lakshma Venkama Rao 13 Moore 113 89
Raja Yarlagadda *v.* Raja Yarlagadda 27 I. A. 151 ... 337, 346
Raj Keswar *v.* Bunshidhar 20 Cal. 863 195
Raj Kisen *v.* Ramjoy 1 Cal. 186 P. C. ... 123, 314, 318, 319
Raja Vurmah *v.* Ram Vurmah (1876) L. R. 4 I. A. 76... ... 322
Raji *v.* Gena 22 Bom. 344 305
Raj Rajeswara *v.* Sundrapandiya Sami 27 Mad. L. J. 649, 27 I. C. 283 133
Ramakant *v.* Shamanund 36 Cal. 590 328
Ramanand *v.* Ramsaran 7 I. C. 27 296
Ramangavada *v.* Shirapugadda 22 Bom. 601, 20 Bom. 423 ... 171
Raman Menon *v.* Chathunni 17 Mad. 184 218

CENTRAL LIBRARY

PAGE.

Rama Raw *v.* Raja of Pittapore 28 Mad. L. J. 634, 29 I. C. 356 ... 130
Ramasahay *v.* Bal Mukund 313
Ramasami Nayak *v.* Ramasami Chetti 30 Mad. 255 362
Ramasami *v.* Sundaralinga 17 Mad. 422, Affd. 26 I. A. 55 256, 297
Ram Chandra Marwari *v.* Muneswar, 33 Cal. 1158 ... 142, 144
Ram Chandra *v.* Sakharam, 2 Bom. 346 ... ... 130, 147
Ramchandra Singh *v.* Raja Mahomed Jowhuruzama, 23 W. R. 367 (Pathrole Ghatwali) 198
Ram Das Marowari *v.* Tekait Braja Behary Sing 6 C. W. N. 87 ... 125
Rameswar Sing *v.* Jibendra Sing, 23 Cal. 683 ... 136, 144
RamKunwar *v.* Ram Dai, 22 All. 326 132
Ramlakshi *v.* Sivanath, 14 Moore 570 314
Ramlal Mukerjee *v.* Secretary of State, 7 Cal. 304 P. C. ... 139
Ram Nandan Singh *v.* Janki Koer 29 Cal. 836 P. C. (Bettia case) 113, 259, 262
Ramrao *v.* Jesvantrao, 10 Bom. 327 ... ... 268, 270
Ramsaranlal *v.* Ram Narayan Sing, 42 Cal. 304 137
Rani Padmvati *v.* Babu Dular Singh 4 Moore 259 163
Rani Parbati *v.* Jagadumba 29 I. A. 96 94
Rani Srimuty Debeah *v.* Rani Koond Luta 4 Moore 292 ... 163
Ran Bijai Sing *v.* Jagatpal Sing, 18 Cal. 111, 17 I. A. 173 ... 264, 265, 333, 335
Raoji Narayan *v.* Dadaji Bajurjee 1 Bom. 523 154
Ravi *v.* Roman 5 Mad. 223 219
Ravji *v.* Mahadevrao 2 Bom. H. C. R. 1 (A. C. J.) 237 ... 268
Ravlojirao *v.* Bulvantrav Venkatash 5 Bom. 437 ... 161, 161, 169
Rareeham *v.* Perachee 15 Mad. 281 275
Rivett Carnac *v.* Jivi Bai 10 Bom. 478 296
Roop Sing *v.* Baisni 4 Cal. 190 113
Rukumanoni *v.* Matilal 4 Bom. L. R. 135 336
Rupa Jagset *v.* Krisnaji 9 Bom. 169 33
Rup Nath Kunwar *v.* Jagunnath 1836 S. D. Sel Rep. 158 ... 137
Rup Sing *v.* Baisni 7 All. 1 P. C. 251

S.

Salisbury *v.* Gladstone 9 H. L. C. 692 324

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

Samarendra Chunder Deb *v.* Birendra Krishna 35 Cal. 777 ... 333
Sanker Babaji *v.* Dattatrya 40 Bom. 155 305
Sanku *v.* Puttama 14 Mad. 289 ... ... 220, 276
Sanniyasi *v.* Salur 7 Mad. 268 209
Sarabjit Pratap Bahadur Shahi *v.* Inderjit Pratap Bahadur Shahe 27 All. 203 ... ... 297, 299, 325
Sartaj Kuary *v.* Deoraj Kuary 10 All. 272, 15 I. A. 51 95, 110, 113, 336
Secretary of State for India *v.* Kirtibas Bhupati Har Chandan Mahapatio 42 Cal. 710 P. C. 211
Secretary of State *v.* Kamach Boyee Shaheba 7 Moore 530 ... 23
Secretary of State *v.* Santo Raja Shetty 21 I. C. 432 331
Seenvulala *v.* Tunama 2 Mad. Dec. 40 259
Seetaramayya *v.* Vencatarazu 18 Mad. 420 272
Segu Chidambaramaia *v.* Segu 12 I. C. 704 120
Sellam *v.* Chinnamal 24 Mad 441 336
Seth Jaidial *v.* Seth Sita Ram 8 I. A. 215 265
Sham Lal. *v.* Chhajpal 19 I. C. 51. 120
Shamanund *v.* Rama Kant 32 Cal. 6 123
Sheolochan Sing *v.* Saheb Sing 14 Cal. 387 P. C. 295
Sheo Nath Sing *v.* Raghubans Kunwar, 27 All. 34 P. C. ... 333
Sheo Pertap Bahadur *v.* The Alliance Bark 25 All. 476 P. C. 7 C. W. N. 84 265
Sheshamma *v.* Chilkaya 26 Mad. 507 ... ... 145, 214
Shewlal Dhurmchand *v.* Bhaichand Luckhoobai 17 Harr 7 S. D. A. R. 195 163
Shivagunga Case 9 Moore 539 ... ... 33, 87, 88, 89, 92, 95
Sinnachami *v.* Ramasami 13 I. C. 7, 22 Mad. L. J. 85... ... 257
Sinthyee *v.* Khana Kepudegur 4 Mad. H. C. 183 ... 134, 346
Sivagnana Tevar *v.* Periasami 1 Mad. 312 ... ... 113, 336, 293
Sivasubramania *v.* Krishnammal 18 Mad. 287 ... 150, 276
Smith *v.* Bfownlow L. R. 9 Eq. 241 352
Sonthweell *v.* Bowditch 35 L. J. 196 331
Soorendranath Ray *v.* Mussamat Heeramonee Burmonesh 12 Moore 91 ... ... 166, 325
Sree Achalram *v.* Udaypratap 11 I. A. 51 ... ... 255, 237

CENTRAL LIBRARY

PAGE

Sreemati Ranee Parbati *v.* Jagadish 29 I. A. 96 102
Sree Rajah Yanumula Vencataryamah *v.* Sree Rajah Yanumuia Boochia Vankoudora 12 Moore 523, 3 B. L. R. P. C. 13 ... 91
Sri Bal Krishnaji *v.* Secretary of State (1892) Printed Judgments p. 324 172
Srimantu *v.* Srimantu 17 I. A. 134, 13 Mad. 406 ... 121, 315, 287
Sri Raja Lakshmi Devi *v.* Sri Raja Surya Narayan 20 Mad. 256, P. C. 290
Sri Raja Satrucharla *v.* Sri Raja Satrucharla 14 Mad. 237 P. C. ... 290
Sri Raja Vencata Narasinha *v.* Sri Raja Rangayya 29 Mad. 437, 7 I. A. 38 288
Sri Raja Virabara *v.* Sri Raja Viravara 24 I. A. 189 115
Sri Sri Radha Madhab Narain *v.* Milan Mahato 21 I. C. 204 ... 138
Sri Sri Raja Rajeswar Gojapati *v.* Sri Sri Viraprataph Rudra Gajapathy Narayan Deo Maharaja-luguru 5 Mad. H. C. 31 ... 298
Sri Virada *v.* Brozokishore 3 I. A. 154 1 Mad. 69 257
Subbanana *v.* Secretary of State 31 I. C. 267 209
Subbaraya *v.* Kanu 16 Mad. 284 180
Subbereddi *v.* Chenglamma 22 Mad. 126 127
Subramaniam *v.* Arunnachelam 28 Mad. 1 135
Subramanyan *v.* Gopala 10 Mad 223 275
Subramanya *v.* Siva Subramanya 17 Mad. 325 120
Sundaralingasami *v.* Ramaswami 26 I. A. 55 256
Suraj Narain *v.* Iqbal Narain 40 I. A. 40 120
Surtuk Chandra Day *v.* Bhagto Barut Chandra Singh 5 D. A. 1853 p. 930 202

T.

Tagore *v.* Tagore (1872) L. R. Ind. App. Supp. Vol. p. 74 ... 107
Tanistry case (1608) Davis 324
T. B. K. Viswanath Sawmy *v.* Kamu, 21 I. C. 724 116
Teetoo Kunwari *v.* Surwan Sing, S. D. A. 1853 p. 765 ... 202
Thakoer Fate Singhji *v.* Bamanji, 27 Bom. 515 ... 145, 214
Thakurani Tarâkumaree *v.* Chaturbhuj Narayan Sing 19 C. W. N. 1119 ... ... 114, 116
Thakur Durryao Singh *v.* Thakur Darri Singh, 13 B L. R. 167 P. C. 326
Thakur Ishri Singh *v.* Thakur Buldeo Singh, 10 Cal. 807 162, 235, 299, 264

CENTRAL LIBRARY

PAGE.

Thakur Kapil Nath *v.* Government, 22 W. R. 17 118
Thakur Lekhraj Kunwari *v.* Thakur Harpal Sing, 39 I. A. 10, 34 All. 64 123
Thakur Nitrapal *v.* Thakur Jaising 23 I. A. 147 ... 123, 329
The Advocate General of Bombay *v.* Amir Chand 1 Knapp P. C. Cases 329 22
The Collector of Madura *v.* Veeracamoo 9 Moore 446 150, 262
The Deputy Commissioner of Beerbhoom *v.* Rongolall Deo W. R. F. B. (1862) 34 196
The Government of Bombay *v.* Desai Kallianrai Hakoomutrai 14 Moore 551, 558 164
The Lord Advocate, *v.* Lord Douglas 9 Cl. and F. M. 211 ... 22
The Pachete Case 5 Moore 48 ... ... 251, 251
Tekait Ram Chandra *v.* Srimati Madho Kumari 21 I. A. 188 145, 344
Therumal Rao Sahib *v.* Arai Rangasawmy 15 I. C. 412 23 Mad. L. J. 79 116
The Secretary of State *v.* Poran Singh 5 Cal. 740 ... 200, 20
The Secretary of State *v.* Santaraja Chetty 21 I. C. 432 25 Mad. L. J. 411 277
The Shivagiri Zamindar *v.* Arunachala 7 Mad. 335 353
The Shivagiri Zamindar *v.* Tirnvengaddy 7 Mad. 339 P. C. 361, 349
The Udayar Palayam Case 149
The United States of America *v.* Wagner 2 Ch. App. 582 ... 300
Timangooda *v.* Rangangavala Printed Judgments for 1878 p. 240 ... 169
Tulsi *v.* Ramnarayan 12 Cal. 117 P. C. 135
T. V. Balkrishna *v.* V. Raju 16 Mad. L. T. 610, 27, I. C. 736 ... 120
Tyson *v.* Smith (1838) 9 A. D. 407 321

U.

Uday Chand Chakravarty *v.* Raja of Pachete 208
Umes *v.* Jagadis, 1 C. W. N. 543 335
Umritnath *v.* Goureenath, 13 Moore 542 320
Urkandan *v.* Kunhunni, 15 Mad. 483 ... ... 220, 276

V.

Vadiasapu *v.* Vyricherla, 12 I. C. 487 P. C. 10 Mad. L. J. 391 ... 157, 182, 211

CENTRAL LIBRARY

PAGE.

Vadreva Ranganayakamma *v.* Vedreva Bulle Ramaya 3 Mad. Ind. Jur. 551 ... ... 113, 114
Vasudevan *v.* Sankaram, 20 Mad. 129 F. B. 219
Veeraraghava *v.* Kotta Reddy, 31 I. C. 532, 2 Mad. L. W. 422 ... 135
Veerbhadra *v.* Vellanke, 10 Mad. L. J. 114 341
Velu *v.* Chamre, 22 Mad. 129 F. B. 219
Vencata Kumaru *v.* Chellayyam, 17 Mad. 150 See 22 W. R. 17 ... 140
Vencata Narasinha *v.* Narayya, 7 I. A. 38 ; 2 Mad. 128 ... 121
Vencata Narasinha *v.* Sobhandari, 29 Mad. 52 P. C. ... 156, 213
Vencata Narayana *v.* Subarayuda, 9 Mad. 214 222
Vencata *v.* Rama, 8 Mad. 257 ... ... 180, 292
Vencata Ratnama *v.* Ramanujasami, 2 Mad 313 272
Vencatarayadu *v.* Vencatarayadu, 15 Mad. 284 ... 179, 180
Vencata Surya *v.* Court of Wards, 26 I. A. 83, 22 Mad. 383 ... 110, 111, 126, 154
Vencayya *v.* Suramma, 12 Mad. 235 347
Vishnu *v.* Mangamma, 9 Bom. 108 ... ... 134, 346
Viswanath Swamy *v.* Kamu, 21 I. C. 274, 24 Mad. L. J. 271 ... 253
Vutsavay *v.* Vutsavay, 1 Mad. Dec. 453 259

W.

Wamanaji *v.* Pareshram (Printed for Judgments for 1884 p. 220) ... 352
Woodayaditya Deb *v.* Mankoondh Narainaditya Deb, 22 W. R. 225 135

Y.

Yeddesnapadi *v.* R. Palli, 24 Mad. L. J. 288, 19 I. C. 440 ... 154
Yenumula *v.* Ramandora, 6 Mad. H. C. 93 137, 148, 15, 237, 248

Z.

Zaminder of Karvelnagor *v.* Trustees of Tirumalai, 32 Mad. 429 ... 125
Zamindar of Merangi *v.* Sri Raja, 18 I. A. 45 ... 121, 315
Zamindar of Shivagiri *v.* Awar Ayyangar, I. L. R. 3 Mad 42 ... 168

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MISCELLANEOUS AUTHORITIES CITED.

PAGE.

Alia Santana Law by Mr. Pillary 214
Ancient Law by Maine 28
Arhanniti 46
Asiatic Monarchies by Patton 59
Ayeeni Akberi 59
Biographies of words and the Home of the Arayas by Max Müller 3
Blackstone Edt. by Stephen 12
Bosnia by Evan 28
Bracton ... ...
Brihaspati Smriti 256
Chhandogya Upanishada 35
Civilization of Eastern Iranians in Ancient Times by Wilhelm Gieger 7
Constitutional History by Stubbs 6, 12
Debi Bhagavat Purana 232
Dissertation concerning Landed Property in Bengal 68
Evolution of the Aryan by Ihering 2, 3, 4, 6
France before the Revolution of 1789 by M. De Tocqueville ... 39
Halhed 68
Harington's Analysis 61, 63
Hem Chandra's Book on Polity 46
Hindu Castes by Steele 154
Hindu Law by Mayne 245
Hindu Law by West & Buhler ... 32, 33, 126, 163 164, 168, 169
History of England by Freeman 12
History of the Law of Primogeniture by Fenny 236
History of the Law of Real Property by Digby 6, 12
Kalika Purana 234
Kalpataru 256
Kamandaki Niti Shastra 232

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PAGE.

Lectures on the Early History of Kingship by J. G. Frazer D. C. L. (1905) 221
Mahabharata 9
———————Adiparva 230
———————Santiparva 42, 231, 234, 218
Manu 255
Matsya Sukta cited by Raghunandan 34
Mimansa 31
Miscellaneous Essays of Colebrooke 22, 308
Parasara 7
Prehistoric Antiquities of the Aryan Peoples by Dr. O. Schrader 3, 5, 6
Primitive Property by De Laveleye 2
Punjab Customs 28
Ramayana 229, 232
Revenue Selections 28
Rig Veda 1, 8, 32, 47
Rise and Progress of the English Commonwealth 12
Saxons in England by Kemble 6
Spirit of Laws by Montesque 11
Statistical Account of Bengal by Hunter 70
Sukraniti 133, 232, 233, 234
Tagore Law Lecturer 1875 ... ... 59, 66
Ulpian 32
Vishnu Purana 232
Vyavahar Mayukha 33

CENTRAL LIBRARY

ADDENDA AND ERRATA.

P. 59 last line for "Two of them" read 'three of them, Kedar Roy of Sripore,'

P. 62 l. 6 after Reg. Add. XI.

P. 111. Add to note 2. Muthusawmy Naiek *v.* Rangarammul 9 Mad. L. T. 39; 8 I. C. 332 See 18 Mad. 287.

P. 148 l. 10 after chiefs add A well-nown popular proverb describes them thus :—शिउ शिखर नागपुर तार अर्द्धक खरगपुर *i.e.*, "Sheo (or Deo) Shekhar or Panchkote or Pachete, Chotanagpur and Khurruckpore its half" are the only Rajes. Indeed these Rajas claim an unbroken descent for 70 or 80 generations.

P. 181. After the first paragraph add. We have already seen that service tenures were originally all inalienable. Even the Chowkidary Chakran lands of Bengal were originally considered to be impartible and inalienable. In a recent case in the United Provinces, the Board of Revenue have laid down that rent-free grants in Oude made in lieu of service are not transferable (34 I. C. 672).

P. 209 Para 2 add. In a recent case the Madras High Court construed the provisions of Reg. 25 of 1802 with reference to the permanent settlement Sunnud of the Raja of Vencatagiri. They held that subject to the rights of Inamdars, the Zemindar was entitled to hold the Inam lands without increased assesment of revenue by the Government. The Secretary of State *v.* Raja of Vencatagiri 35 I. C. 266, 31 Mad. L. J. 97. See Vedanta *v.* Kanneyappa 9 Mad. 14 F. B.

P. 217. Add to footnote 1 the following :—

Ramganga Deo. *v.* Doorgamanee 1 Beng. S. D. A. R. 270 (1809) (In this case the custom of impartibility was upheld in respect of Tippera Raj under Section 2 of Reg. 10 of 1800 and it was further held that by custom a Yuvaraj was entitled to succeed before sons of the deceased Raja.)

Kunwar Bodh Sing *v.* Seo Nath Singh 2 Bengal S. D. A. R. 92 (1813).

(In this case the custom of impartibility and primogeniture was upheld in respect of Raj Ramgurh in the Hazaribagh District which had been confiscated in 1772 and which was granted to a third party who had assisted Captains Camac and Goddard in suppressing the rebellion of the old Raja Mookund Singh, because it was a large estate the proprietor of which held the tittle of Raja and maintained a sort of feudal establishment of troops and dependent Jagirdars notwithstanding Reg. XI of 1793)

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Urjoon Manic Thakoor *v.* Ram Gunga Deo 2 Bengal S. D. A. R. 189, (1815).

(In this case the custom of the Tipperah Raj of appointing a Yuvaraj and a Burra Thakoor, the latter being entitled to be a Yuvaraj in his turn and failing such appointment, the custom of primogeniture, was found to prevail.)

Rani Soomitra, *v.* Ramgunga Manik 3 Bengal S. D. A. R. 260, (Tippera Raj).

Thakoorai Chatturdharee Singh *v.* Thakoorai Teluckdharee Singh 2. Bengal S. D. A. R. 260 (1839).

(In this case the custom of primogeniture prevailing for 200 years was upheld in respect of Jagir Hurbhanga in Pergunnah Paloon in Chotanagpur. It was also found that the estate of Runka did not form part of this Jagir but was separate property of a junior member.

Maharaja Gurunarain Deo *v.* Unund Lal Sing 6 Bengal S. D. A. 282 (1840).

(In this case the custom of Pachete Raj known as Sekhur as to its impartibility and inalienability for 68 generations was alleged and discussed. Affd. 5 Moore 82.

Maharaj Konwar Basdeo Singh *v.* Muharaja *v.* Rooder Sing 7 Beng. S. D. A. R. 271 (custom of impartibility in Darbhanga Raj upheld)

Raja Rughoonath Singh, *v.* Raja Hurrehur Sing 7 Beng. S. D. A. 146 (1843), (custom of impartibility us the estate Raipore in Manbhom and the right of the eldest son by a junior Ranee upheld).

Rawat Urjun Singh *v.* Rawat Ghunsiam Singh 5 Moore 169 (1851).

(In this case the custom of primogeniture was upheld in Ilaka Rawatpur Zilla Cawnpur, notwithstanding Reg. XI of 1793 and 2 of 1803).

Errata—P. 13 Note 3 read Barua for Barra Note 6 read Sup. for Sub, P. 207 last line for inpartible read impartible.

P. 163. Note 1 add 7 after Harr. Read for I. A. read S. D. A. omit Ret.

P. 166. Note 1 for 6 Moore read 2 Moore 9.

P. 211. In the marginal note read resume for revenue.

P. 268 note 1 Read Taque for Tagore.

P. 335. F. M. Subheading for (*b*) read (*c*).

P. 347. M. ,, for (*c*) read (*d*).

P. 347. M. ,, for (*a*) read (*e*).

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REFERENCES AND ABBREVIATION.

Cal.	...	Indian Law Reports Calcutta Series
Bomb.	...	,, Bombay Series.
Mad.	...	,, Madras Series.
All.	...	,, Allahabad Series.
C. L. R.	...	Calcutta Law Reports.
C. W. N.	...	Calcutta Weekly Notes.
Cal. L. J.	...	Calcutta Law Journal.
B. L. R.	...	Bengal Law Report.
W. R.	...	Sutherland's Weekly Reporter.
Moore	...	Moore's Indian Appeals.
I. A.	...	Law Reports Indian Appeals:
Bom. L. R.	...	Bombay Law Reporter.
Bomb. H. C.	...	Bombay High Court Report.
Mad. W. N.	...	Madras Weekly Notes.
Mad. L T.	...	Madras Law Times.
Mad. L. J.	...	Madras Law Journal.
Mad. L. W.	...	Madras Law Weekly.
Mad. H. C.	...	Madras High Court Report.
Mad. Jur.	...	Madras Jurist.
I. C.	...	Indian Cases.
Pat. L. J.	...	Patna Law Journal.
Oud. L J.	...	Oude Law Journal.
Oud. Cas.	...	Oude Cases.
S. D. Sel. Rep.	...	Sudder Dewany Select Reports.
S. D. A. R.	...	Sudder Dewany Adalut Reports.
Punj. R.	...	Punjab Report.
Punj. L. R.	...	Punjab Law Reports.

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THE HINDU LAW
OF
IMPARTIBLE PROPERTY.

INTRODUCTORY LECTURE.*

History of the idea of partibility of property.

THE history of the growth of legal ideas is always very interesting. The history of the idea of the partibility of property among Hindus is specially so, bound up as it is with the mode of life of the original Aryan people and the family system and the form of government that prevailed among them.

Ancient Aryans a pastoral people.

Modern scholarship has established that the original Aryans were a pastoral people. Some of the earliest Riks of the Rig Veda describe the Aryans as a pastoral fighting people.† "The pasture land was common property;

---

* This introductory lecture has been retained in its original condition dealing with both secular impartible property and impartible property attached to endowments and religious institutions.

† युवस्व निवीरं गव्यमश्व्यं च राधः "Give us heroic sons and the wealth consisting of cows and horses." Rig Veda, 7 M. 92 S. 3. Again 7th Mandal 77 and 65 Suktas ask Mitra and Varuna to "water the pasture grounds" and to make the extensive pasture grounds free of all fears.

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personal property in land was unknown to antiquity; all land was common property."* We have traces of this state of things in the laws of Manu. Among the Romans also, for many centuries, community of property in pasture land was maintained." Impartibility was the original law. It is a very interesting history how the pastoral Aryans became an agricultural people and how with the spread of agriculture, came naturally the law of partibility of land.

Early Aryans nomadic, averse to saving property.

The early Aryans were a nomadic people. In Sukta 42 of the first Mandala of the Rig Veda, we find the following prayer: "Take us to beautiful grassy country. May we not get any trouble on the way."† It shows the mode of life the early Indian Aryans led. The early Greeks were also described as nomadic by Thucydides. Strabo speaking of Germany. says "common to all the inhabitants of this land, is their readiness to migrate, a consequence of the simplicity of their mode of life, their ignorance of agriculture in the proper sense and their custom, instead of laying in stores of provisions, of living in huts and providing only for the needs of the day." Indeed the sweet word "father land" had no attractive sound for the primitive man, nor did it acquire it until a territorial basis was supplied

* See Evolution of the Aryan, by Ihering, p 14. See also De Laveleye's Primitive Property (1878).

† अभिसूयवसं नय न नवज्वारोअध्वने।

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to the political unit in place of the tie of kin. How was the change effected and what were the institutions with which the migratory tribes parted with one another? Here the wonderful and truthful history contained in words found by the genius and industry of modern scholars comes to our help.

Ancient Aryan social and political constitution.

We find the word Viç, and Viçpati common to all the Aryan nations. Sanskrit Viçpati, Teutonic Viçpati, Zend Vespaito, Lithonian Wieszpati, Slav Viszpati, Pruss Waispathin* show that the Aryan nations were divided into Viçes or tribes and had Viçpatis or leaders of tribes. "In the Rig Veda, Viç as it seems, frequently means a combination of several Sibs. The individual Sib as a settlement, is called *grama* and *Vrjana*, as a community, *Janman*."†

"The tie which connected the people was very loose. They were gathered into tribes (Jana) ruled by princes (Rajan); the tribes were divided into provinces (Viç) and these again into villages (Grama),"‡ But there was no bond of union between the tribes to bind them all together into one political whole. The tribe was the highest political unity. Only in time of danger did one tribe combine with its nearest neighbours. Each tribe would have its elder or chief, and above all the

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* Biographies of words and the home of the Aryas by Max Muller.

† Pre-historic antiquities of the Aryan peoples by Dr. O. Schrader, p. 394. I do not find the word Janman in the Rig Veda. Probably it is a mistake for Jana.

‡ Ihering Evolution of the Aryan, p 25.

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combined tribes would be the Viçpati whose office became in course of time hereditary. Sir Henry Maine says that the election of an elder to be head of the Sept was based on the custom of the election of a patriarchal "house-father" in a joint family and as the chiefs of tribes sank into the position of nobles and were succeeded by their eldest sons in the possession of their offices and demesnes, a similar rule might grow up with regard to the king. And he further says that the eldest son succeeded "for reasons connected with the priestly character of the king." But though there may have been some custom in Rome, in India whether in the Vedas or in the Smritis there is no trace of the priestly character of the king. He was never regarded as the owner of the soil and the character of his office is very clearly and minutely described by Manu and the other law-givers as we shall see hereafter. Dr. Ihering says that "the two ideas of the family and of the Sib are based on the notion of the power of the father over his children: the former consists of the free persons under the authority of a living ascendant, the latter of those free persons who would have been under such authorit had no death taken place. The mark of the Sib is the *nomen gentile*, the name of the common ancestor."* This state of

* Ihering's Evolution of the Aryan, pp. 322, 324.

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things we find continued among the Romans, Greeks and Germans. Among the Romans and the Greeks we know how the idea of the modern absolute king was very disagreeable. Tacitus reports of the Germans that among them "there were no kings but the familæ and propinquitates fought together in battle." The *Principes* of the Teutons and the Celts, according to Tacitus and Cæzar, had no position in the government at all. They were merely distinguished by their wealth, birth or influence, which advantages however were often stepping-stones to the kingship. "In the Vedic period—and we may accept the same for the Aryan nation—each tribe stood under a king (Rajan) appointed by election who in time of war had the chief command. He was *Satpati*, *i.e.*, leader in the field. The king did not stand at the head of a nation but of an army; he was the king of the army, not of the nation, the same as Herzog of the Teutons who had "to lead the Army." Therefore his authority was unlimited in all military concerns; he had power over life and death."*

Now when the Aryan nations migrated to the west to Europe and to the south to India, the king of the Teutonic and Roman nations, as well as of the Indians, was not the king of the mother nation. "He was the commander-in-chief of the migration."

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* Schrader, p. 398.

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In those times of wandering the people and the army were one and the clan-lord or *Reg* or *Rajan* became the commander, *Satpati* or *Voge-voda*.* It was in those times that the reins of regal or princely power were drawn tighter. When a country was conquered, the different bodies of settlers divided the land into townships or districts bearing the main features of the Aryan Sib. Probably a large district was allotted to the leader as his domain and smaller districts to the king's immediate followers,† The king was however never regarded as owner of the soil.‡

Caste system among ancient Aryans.

In India and Persia, we find a peculiar state of things, which also probably prevailed among other ancient Aryan nations. In both countries, the Aryans were divided into three castes, the Brahmans or Atharvans, the Kshatras or Kshatriyas and Vaisyas or Vaisus. In Persia, the Atharvans mainly lived by performing purificatory ceremonies. "The Kshatriyas were a kind of rural gentry composed of the most opulent landlords, who could entrust to their servants the management of their estates and had sufficient leisure to exercise themselves

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* Ihering, p. 324.

† Digby's History of the Law of Real Property, p. 10.

Stubb's Constitutional History, Vol. I, pp. 64, 72; see also Kemble's Saxons in England.

‡ Schrader's Pre-historic Antiquities.

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in the use of arms." In Persia, the Vaisyas were a servile class.* The Brahmins also seem to have been originally a warrior caste, as appears from the ancient marriage Mantra by which the bride is blessed with the blessing of being the mother of a hero. The Brahmans and Atharvans, though priests, who were placed in the vanguard of battle for propitiating the gods of war, seem to have been warriors themselves, as appears from the martial achievements of the childrens of Vasista and Visvamitra in the account of the early conquest of India given in the Rig Veda. When however, they leff off martial pursuits, they became very like the Persian Atharvans but they had large grants of lands made to them by the kings upon which they lived, and over and above that, by custom one-thirtieth of the produce was supposed to be due to them, as Parasara says † The Kshatriyas were all Rajanyas. They were prohibited to carry on cultivation. Their main work was declared to be the profession of arms and the protection of their subjects. From this description, it appears that they were very like their brethren in Persia, and all of them occupied the position

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* Civilization of Eastern Iranians in ancient times by Dr. Wilhelm Gieger. p. 64.

† राज्ञे दत्त्वा तु षड् भागं दैवानाञ्चैकविंशकम्।
विप्राणां विंशकं भागं कृषिकर्त्ता न लिप्यते॥

Parasara, Ch. 2. V. 14.

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of subordinate chiefs. The Spartans and the early Roman conquerors of Italy also were a military, caste, who had the land cultivated by slaves. The Aryan conquerors of India lived surrounded by herds of cattle and many slaves, as appears from a Rik which asks for "a hundred asses, hundred sheep and hundred slaves."* In troublous times of the first conquest of India, it is possible that land was held by all Kshatriyas in military tenure. However that might have been, the system described in the Mahabharata (Santi Parva, Ch. 87, v. 3-8) and by Manu was as follows: "Let him (the king) appoint a lord over each village as well as lords of the villages, lords of twenty, lords of a hundred and lords of a thousand. The ruler of the villages shall enjoy one *kula* (as much land as suffices, for one family), the ruler of twenty, five *kulas* the ruler of a hundred, one village, the lord of a thousand, one town." (Manu, Ch. VII 115-119). Then again, Ch. IX. v. 272 speaks of officers appointed to guard provinces and vassals ordered to help them. The land was cultivated by the Vaisyas, who according to the old Persian records were a servile class of Aryan origin but who in India were free men, who by rearing of cattle, cultivation and trade became very opulent and mostly lived in

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* शतंमे गर्द्दभानां शतमूर्णावतीनां शतंदासा अमिसृजः। Rig Veda 8, M. 56, S. 3.

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towns having many slaves themselves.* The Sudras were the aboriginal inhabitants of India regarded as slaves who enjoyed personal freedom, though many of them belonged to some master.

Similarity between the laws of Manu and Salic laws.

It is surprising how the Salic law agrees with the law of Manu in this matter. The Salic law speaks of (1) Freeborn persons (ingenuus Francus, Salicus Francus) with a wergeld of 200 solidi; (2) Serfs (leti or liti) who enjoyed personal freedom though belonging to some master and (3) Pueri regis (probably serfs in the service of the king.) The chief of the state was a king. His officers included the Grafio who was chief of a Pagus (shire); Sacebaro, chief of a hundred (both with a wergeld of 600 solidi). In India, as in other countries, most of these offices became hereditary.

Were chieftainships and offices impartible.

Thus there were petty chieftainships and officers of the king having land attached to their offices among ancient Aryans. Were these estates always impartible? It is a difficult question to answer.

Rule among Celts.

Sir Henry Maine mentions of an old Celtic custom by which there was a "portion of land attached to the Seignory or Chiefry which went

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* In the Mahabharata, however, we find the Vaisyas mentioned along with Sudras as classes about whom it was doubtful whether they were governed by the Vedic Laws as the following verse shows:

ब्रह्मचैवे प्रसूताश्च वैश्याः शूद्राश्च मानवाः।
कथं धर्म्मान्चरिष्यन्ति सर्व्वे विषयवासिनः॥

शान्तिपर्व्वणि, ६५ अ १४, १५

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without partition to the Tanaist" or the chief of a clan under the system of tanistry. A custom like that probably prevailed among all Aryan nations and made the introduction of feudalism in to Europe easy.

Rule under the feudal law.

There was a maxim of feudal law in Europe that certain dignities and offices, castles required for the defence of the realm and other inheritances under the "law of the sword" should not be divided. But this maxim cannot be traced back before the 10th or 11th century A. D.

It is supposed that among the Germanic nations the feudal system did not originally prevail. They adopted it from the Roman system of quartering soldiers upon frontier lands on condition of their rendering services when called upon in the defence of the frontier. Probably the conception of the tenure under which these soldiers held their lands was borrowed to some extent from the attributes of the interests in land called *emphyteusis*. Though the *emphyteuta* (the person having the right) had an indefinite power of enjoyment and alienation, *emphyteusis* was nevertheless regarded as a *jus in re aliena* as a right distinct in kind from the *dominium* or property in land which was considered to be retained by the grantor. The barbarian settlers upon Roman territory seem to have been brought under the influence of these legal ideas, and a curious blending of them with the old Teutonic customs gave rise to the feudalism of Europe.

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The *principes* became the lord and *comes* the feudal tenant, subject to the condition of rendering military service. But the impartibility of such tenures was of later origin.

Kingdoms and fiefs became impartible in Europe after tenth century.

In France, the crown itself was regarded as partible inheritance under the first two dynasties. In the beginning of the 11th century, primogeniture had become the rule as to fiefs, offices and dignities, and partly no doubt from analogy and partly from reasons of public policy, the crown was brought within the same rule under the house of Capet.* As regards fiefs, they were regarded as partible until A. D. 1138, when Emperor Frederic Barbarossa for reasons of public policy forbade the greater tenancies to be subdivided. The Assessi de Jerusalem had laid down the same rule in 1099, though the king was allowed to select any one of the children for succession. In Brittany, primogeniture was not introduced till 1185 even for nobles and knights.†

In India also, we find from the Puranas that in early times, kingdoms were sometimes partitioned.

History of the law of impartibility

From what has been stated above, it seems probable that inalienability and impartibility were two of the incidents of property in land among the ancient Aryans on account of the joint family system that prevailed among them.

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* Montesquieu Spirit of Laws, XXXI 32.

† Kenny on the Law of Primogeniture in England, p. 4.

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But when we come to authentic history we find that among the Greeks, the Romans, the Britons and the Saxons, equal partition of land among the sons was a well-established rule.* Only in Scandinavia the strict rule of primogeniture prevailed. In England and some other European countries, on account of the introduction of the feudal system, the impartibility of land again became the rule,† with the modification that according to ancient Aryan custom, the family was the owner of the property; the eldest being only the manager, but under the feudal system the eldest became the owner. Now we go to the law as we find in the Hindu Smritis.

'Custom among ancient Aryans.

It appears that in ancient Aryan Society, the *Pater-familias* represented the family in all matters religious, social or political. He alone was clothed with legal rights and burdened with legal liabilities. On the death of the *Pater-familias*, the law had to determine on whom his *persona*, *i.e.*, the aggregate of his political and social rights and duties should devolve. Latin *persona* means the same thing as Sanskrit

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* Stephen's Blackstone, vol. I, p.404.

† See Palgrave's Rise and Progress of the English Commonwealth, vol. I, p. 495 for a full account of the causes which led to feudal tenures in England. See also Stubb's Constitutional History, vol. I, pp. 264, 152, 157. Freeman's History of England, vol. I, p. 92. Digby says on this matter: "there can be no doubt that tenure in Socage is the successor of the alodial proprietorship of early times. The chief characteristics of Socage tenure were, (1) on the death of tenant in Socage, the land, if "antiquitus divisum" descends to all the sons. This was the case in Glanville's time but under the influence of Norman lawyers, the rule of primogeniture had become general in the next century, except in the case of the Kentish tenure of Gavelkind and in other localities where special customs retained their hold."

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Atman. The ancient Hindu thought that the son was one's own self reproduced. On the eldest son naturally, and by the said fiction, the duties of a man and also his rights devolved. He represented the family. This was the origin of the law of primogeniture, as found in the old Smritis. In after times, when the position of the *Pater-familias*, which was like that of a feudal lord, became less important in the body politic, with the growth of the power of the King, the rule of primogeniture fell into disuse, except in the case of principalities and feudal chiefs and persons holding hereditary offices.

Rights of eldest son among ancient Indians.

The old law according to the Rishis was, that the eldest son alone was entitled to the inheritance, subject to the duty of maintaining his brothers. The idea got hold of the Indo-Aryan mind that the son saved the father from hell, and took upon himself the debts of the father, temporal and spiritual. It was also a very ancient idea among Aryan nations that the son was liable for the worldly debts of the father to his creditors. The *Sui heredes* under the old Roman Law had to satisfy the creditors of the deceased, whether the inheritance sufficed or not. The payment of debts somehow or other was considered an urgent duty, and the ancients had an idea that debts followed a man after death, and probably dragged him to hell. By the birth of a son alone could a man be free from the danger, for he left a substitute, and the debt

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them devolved on the son. The idea never lost its hold over the Hindu mind, and hence we find that according to the Rishis, it is an obligation, legal, not moral only, of the son to pay the father's debts. This liability of the son to pay the father's debts was amplified into the spiritual obligations of the Brahmin, namely, the debt to the ancestors to beget a son, the debt to the Rishis to study the Vedas, the debt of sacrifice to the Gods and the wordly obligation to pay the father's debts. "The son is made a substitute for the father for meritorious work," say the Vedas. The Sraddha is a debt of the father devolving on the son and is also a debt of the son himself. The idea that the son was under a liability to pay the worldly debts of the father must have preceded the idea of his obligation to perform the Sraddha, for in the most ancient books we have got, the sons liability to perform the Sraddhas wherever it is mentioned, is called a debt by analogy to temporal debts.* The son, grandson and great-grandson and daughter's son were the only persons who were under an obligation to perform the Sraddha and to pay his other debts under the Hindu law, whether they received any property or not. Under the old Roman and Greek Law also, the direct descendants were bound to perform the funeral ceremonies and to

* Many learned authors have fallen into the error of considering the Sraddha as the basis of all rights of the son, on account of imperfect information on the subject as will be apparent from the above.

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make offerings to the ancestors and to pay their debts, whether they received any property from them or not. By the birth of the first son, it was supposed by the Hindus, a man was freed from all these debts. Therefore he alone was entitled to the inheritance, the others being entitled to be maintained. Probably it was a remnant of some custom of primogeniture prevailing among ancient Aryans based upon the prevailing joint family system which required one head or lord, called Prabhu, in the Hindu Smritis. The injustice of the rule became very soon apparent to the reasonable mind and the just instincts of the Hindu race, and the law was slowly changed, and the partition of family property was ordained. At one place both Manu and Gautama give to the eldest the entire inheritance. In other texts, Manu gives to the eldest one-twentieth more, Gautama gives either two shares or one-twentieth more, Vashistha gives the eldest son two shares, Baudhayana gives one-tenth more or the horse or the cow. Apastamba set his face against this unequal division, and abolished the custom of the eldest son's extra share, and ordained that he should be given some particular article as a mark of honour. In Buddhistic times, the eldest son's extra share was recognized as will appear from the Burmese Manu, and was put down at one-tenth.

The custom of giving an extra share to the eldest son prevailed, it seems, among all

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Custom of eldest son's extra share prevalent among all Aryan nation.

the Aryan nations. It existed among the old Persians. In ancient Germany and France also, this custom of giving a preferential birth-right to the eldest son was recognized, and in the latter country it was called "le preciput." The eldest son or the eldest child got the house and a piece of furniture and a piece of land "as far as a chicken could fly" as being traditionally exempt from partition. Under the Athenian law, as Demosthenes tells us, the house went to the eldest son. In India, the custom was reprobated by Apastamba and prohibited in rather recent times by the Aditya Purana.

History of partibility of property.

We thus find how slowly the right to partition was established among Hindus. When it was established, and that was before the Narada Smriti and probably the Manu we have got, were written, and before the words Daya and Dayabhaga came into use, the one question on the matter of inheritance which the lawgivers discussed was Dayabhaga or partition of the paternal property (see Narada Ch. 13 V. I.)*. The word Daya is derived from the root *Da* and originally meant gift. We find also a text of the Veda, which is cited as the authority for the right to partition of younger sons, to the effect that "Manu divided his wealth among his sons." And we find also texts in all the Smritis about

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* Sec. 11. I. A., p. 145.

विभागोऽर्थस्य पित्र्यस्यपुत्रैर्यत्र प्रकल्पते ।
दायभागइति प्रोक्तं तद्विवादपदंबुधैः । नारद १३ अ० १ ।

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partition during the father's life-time. All this tends to show that the ancient Law was, that without a disposition *inter vivos* by the father, the eldest or the most capable among the sons took the entire inheritance as Prabhu or lord of the family. As a rule the eldest took. But ancient texts show that when the eldest was not a capable person, the most capable among the brothers took the father's place. We find a curious custom among the Celtic Irish, according to which succession was determined by a system of nomination and election combined.* The custom is probably a survival of a very ancient Aryan rule. However that may be, the text of the Veda mentioned above and the old Smritis go to show that the partibility of property owed its origin to the natural affection and sense of justice of the father, who to secure the rights of younger sons, made it a point to divide his wealth during his life-time, giving an extra share to the eldest son. In course of time this practice led to the recognition of two very different rules: first the rule of the right of sons to demand partition during the father's life-time; second, the rule that all the sons were entitled to shares on partition after the death of the father. The above will not be wholly intelligible, if it is not remembered here, as mentioned before, that in ancient society brothers, for mutual protection against others could not afford to separate from each

* See 11 I. A. p. 145.

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other and that jointness was the normal condition and also that it was an idea of the ancients that father and son were one person and that the son had thus an equal right with the father in ancestral property.

Things impartible according to Hindu Law-givers.

Now when the custom of partition was established, certain properties were declared as impartible. Manu says "A dress, a vehicle, ornaments, cooked food, water and women, property destined for pious uses or sacrifices, and a pasture ground they declared to be indivisible." The ancient law-givers Sankha and Likhita say: "No division of a dwelling takes place, nor of iron water-pots and ornaments, nor of women and clothes enjoyed by one, nor channels for drawing water. Prajapati has so ordained." Harita says, that the family god and the dwelling house should be taken by the eldest son. Katyayana agrees with Manu and adds to the list, carriage, books and implements of arts. Katyayana cites the authority of Vrihaspati for the rule. But the text of Vrihaspati we have got, lays down a very different proposition. It thus appears that the Vrihaspati we have got is a later edition of the book which Katyayana had before him. More advanced legal ideas prevailed during the time of the compilation of the present Vrihaspati, and we find him declaring every property considered indivisible by ancient lawgivers as divisible and laying down that what is incapable of physical division should be either sold and the

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sale proceeds divided or the whole should be enjoyed by turns.

Now from the above it is clear that properties which are now considered as impartible, do not fall in the list of impartible things mentioned in the Smritis or the commentaries, excepting perhaps property dedicated to religious uses as to which there is considerable doubt,* According to Vrihaspati, every thing is divisible. Most writers on Hindu Law have fallen into the error of considering Rajes and Muths as included in the category of indivisible or *Abibhajya* things mentioned by the commentators. It is on account of this error that it was repeatedly decided in our Courts, for nearly a century, that Rajes might be joint-family property in which the son had such right by birth as to entitle him to prevent an alienation by the father. It is only recently that the Privy Council have corrected the error. It has also been repeatedly laid down that a brother might take a Raj by right of survivorship—a proposition the correctness of which will be fully considered in its proper place.

Impartible Property which is the subject of these lectures.

By impartible property with which we are mainly concerned, should be understood property which by its very nature, must be taken by one. A principality cannot be taken by two, nor can the office of the head of a religious

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* There is a divergence of opinion about the meaning of the word Yogakshema which is supposed to mean religious uses, mentioned by Manu, which is very important and which will be considered in its proper place in the chapter on endowments.

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endowment be held by more than one. As property which is impartible is very often inalienable, so property which cannot be alienated is very often impartible. Thus property which is dedicated for religious or charitable purposes is impartible. Property which is attached to an office that can be held by only one is also impartible. Feudal tenures of which we have got many instances in India are impartible. Last of all, property dedicated to a god is the property of one who neither dies nor leaves successors behind him, and is consequently impartible.

King not master of land, nor a Chieftain.

Now it will be observed that in the case of principalities, the king is master of all things within his realm and cannot be said to hold property as against his subjects. He is above and beyond the law applicable to others. According to Hindu ideas, he is a divine person, whose office is to protect the weak against oppression and to enforce the divine law as declared in the Smritis or by the assembly of holy men. Every act of his life had to be regulated by the express rules of the Smritis. His was a divine office and he was never considered in the light of an owner of property* in the legal sense. The Mimansa makes it very clear. The position of the Mimansists is thus stated by Mr. Coolebroke: "A question of considerable interest, as involving the important one concerning property in the soil of India, is

* Jaimini, 6-7-2.

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discussed in the sixth lecture. As certain sacrifices, such as that which is called *visvajit*, the votary, for whose benefit the ceremony is performed, is enjoined to bestow all his property on the officiating priests. It is asked whether a paramount sovereign shall give all the land, including pasture ground, highways, and the site of lakes and ponds; an universal monarch, the whole earth; and a subordinate prince, the entire province over which he rules? To that question the answer is: the monarch has not property in the earth, nor the subordinate prince in the land. By conquest kingly power is obtained and property in house and field which belonged to the enemy. The maxim of the law, that the king is lord of all excepting sacerdotal wealth, concerns his authority for correction of the wicked and protection of the good. His kingly power is for government of the realm and extirpation of wrong; and for that purpose he receives taxes from husbandmen, and levies fines from offenders. But right of property is not thereby vested in him; else he would have property in house and land appertaining to the subjects abiding in his dominions. The earth is not the king's, but is common to all beings enjoying the fruit of their own labour. It belongs, says Jaimini, to all alike. Therefore, although a gift of a piece of ground to an individual does take place, the whole land cannot be given by a monarch, nor a province by a subordinate prince, but house

Hindu idea of King's right.

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and field acquired by purchase and similar means, are liable to gift."*

European idea of King's rights.

The above principle of law was accepted also in Europe. Lord Brougham made the following observations on this matter: "I must beg to enter my protest against the distinction, which has been taken as to the prerogatives of the crown being different, where the Crown is supposed to be dealing with what is called private and individual property and public property. The prerogative of the Crown is precisely the same as regards what is called the property of the Sovereign and the property of the public. It is only within the last half century that any private property has been acknowledged to exist in the crown at all. Prior to that all lands descending to the crown from ancestor or collaterals were held *jure Corona*. All property of the Crown is held for public purposes and is Crown property; it is public property which the Crown administers for the maintenance of the state"† The Privy Council also held that no distinction exists between public and private property of an absolute Sovereign.‡ In another case, their Lordship of the Privy Council make the following observations: "But then it is contended that there is a distinction between the

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* Colebrooke's Miscellaneous Essays, P. 345.

† The Lord Advocate *v.* Lord Douglas, 9 Cl. and F. M. 211. See Comyn's Digest.

‡ The Advocate General of Bombay *v.* Amir Chand, 1 Knapp P.C. cases 329.

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public and private property of a Hindu Sovereign and that although during his life, if he be an absolute monarch, he may dispose of all alike, yet on his death, some portions of his property, termed his private property will go to one set of heirs and the Raj with that portion of the property which is called public will go to the succeeding Raja. It is very probable that this may be so."* The correctness of the proposition will be discussed in another chapter. Sufficient for our present purpose is to mention that the principle that Crown property is not the personal property of the king is an ancient principle enunciated by the old Rishi Jaimini, which had prevailed among all Aryan nations and which they carried with them to the countries to which they migrated.

Shebait's right.

The head of a religious institution and the Shebait of a religious or charitable institution can, in the very nature of their office, have no right of ownership, in the endowed property.

Nature of property in Military and service tenures.

As to the property held in military tenure or as Ghatwali and the like, strictly speaking, it is property attached to an office. Such also is the property of a Polygar, who in many cases was originally a feudal lord, and of the holder of a Vatan or Vantandar. In some of these cases, it has been held that the holder of the land must prove custom, to defeat a claim for partition. But it must be said that instances of this

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* Secretary of State *v.* Kamach Boyee Saheba, 7 Moore 550.

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kind are rare and occur only on account of peculiar circumstances.

Royal grants of revenue for service, such as Jagirs or Saranjams in Bombay, are also impartible. But it is not true that whenever land is attached to a hereditary office, it is indivisible. In Bombay, there are numerous revenue and village offices, such as *Deshmukh*, *Daspande Desai* and *Patel*, which are remunerated by lands originally granted by the State. These lands are as a rule impartible but some of them have by lapse of time come to be considered as purely private property of the families, which hold the offices, though they are subject, to the obligation of discharging the duties and defraying all necessary expenses, and on partition, a portion of the property is set aside, (as in some cases of private endowments) which is sufficient to provide for the discharge of the duties and the rest becomes ordinary private partible property. It has been held that the discontinuance of services attached to an estate does not alter the nature of the estate and render it partible. It is a question of some difficulty whether the discontinuance of service will render the land liable to resumption. The Chakran tenures in Bengal, which are of this nature, have been the subject of much litigation. This is not the proper place ro discuss these matters in detail. Sufficient has been said for our present purpose.

It will thus be seen that properly speaking

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all impartible property, according to later Hindu jurists, is property attached to an office. The property of the King and of a God is not property in the strict legal sense. But holders of impartible Zemindaries which were originally principalities have come to regard themselves as owners of their estates and holders of military and other service tenures also have, like the feudal lords of Europe, come to be considered as proprietors of the lands held by them.

Impartible property is property attached to an office.

It is very often thought that a thing which is impartible is also inalienable and what is inalienable is also impartible. As to the former, the Privy Council have held that what is impartible is not necessarily inalienable and until inalienability by custom is proved, it is alienable. It will be observed that most of the things declared not partible by the Hindu lawgivers are alienable. They are however mostly moveable. The Hindu lawgivers speak of inalienability only in connection with land. In ancient times, among Hindus, land was inalienable but it was liable to partition among the members of the family to whom it belonged. But it was not wholly inalienable. It was alienable by or with the consent of the entire family. An entire principality was always impartible.

Impartibility and inalienability, whether they go together.

This inalienability of land was an incident of the ancient custom of holding land by village communities. Sir Henry Maine in his brilliant book, has made the idea of village communities

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familiar to every body. Mr. Metcalfe's graphic description of it has formed the basis of an oft-quoted noble poem. But Mr. Mayne on this question says:—"The ancient Hindu writers give us little information as to the earlier stages of the law of property. So far as property consisted in land they found a system in force, which had probably existed long before their ancestors entered the country, and they make little mention of it, unless upon points as to which they witnessed or were attempting innovations. No allusion to the village coparcenary is found in any passage that I have met. Manu refers to the common pasturage and to the mode of settling disputes between villages, but seems to speak of a state of things when property was already held in severalty. But we do find scattered texts which evidence the continuance of the village system, by showing that the rights of a family in their property were limited by the rights of others outside the family." Mr. Mayne apparently disagrees with Sir Henry Maine and his followers. Now, if we are to go to a time anterior to Manu for evidence of the existence of village communities, we must be on very uncertain ground. Let us find out and tread on the firm land of history and authentic record in ascertaining the truth in the matter.

In alienability and Customs of land-holding.

It is not true that the Aryans, when they came to India, left the land system as they found existing untouched. The Aryan con-

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querors always carried their own institutions with them. In the beginning probably, the Spartan system prevailed in India and the land was cultivated by the servile classes. In India, land was cultivated by the Vaisyas and the Sudras. The Brahmins and the Kshatriyas would not cultivate the land. They lived on the produce of it. We find mention in the Pali books, written 300 years before Christ, of *Brahman-gramas* or villages of Brahmans. We also read of Shashanas of Brahmans in the old Smritis. These were grants made to Brahmans by kings. The Sashanas still exist all over India. The village belongs to a Brahmin family. There are barbers, washermen, carpenters, musicians and other necessary artisans settled on the land enjoying lands granted to them, and serfs cultivating the land. The rights and privileges of all are determined by immemorial custom. There were also Kshatriya villages. In Bengal, when Brahmans and Kayasthas were brought by Adisura, they too were granted villages in this fashion. Every Aryan family had slaves or serfs attached to it, as appears from the Vedas, and we find family slaves mentioned in the ancient marriage ceremony described by Gobhila. The Vaisyas latterly mostly lived in towns engaged in trade and commerce but even so late as Kalidas's time, the villages were mostly inhabitated by Sudras.

Ancient system of holding land among Aryan Hindus.

In the Punjab, we find a system of holding land, which is known as the communal

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Zemindary system. Under this system "the land is so held that all the village co-sharers have each their proportionate share in it as common property, without any possession of or title to distinct portions of it; and the measure of each proprietor's interest in his share is fixed by the customary law of inheritance. The rents paid by the cultivators are thrown into a common stock, with all other profits from the village lands and after deduction of the expenses, the balance divided among the proprietors according to their shares." This state of things prevailed in Servia and the adjoining districts as described by Sir Henry Maine.* This was true where a village belonged to an undivided Brahmin or Kshatriya family. This again refers to landlords whose rights are capable of being held jointly by men of different families. But ordinarily, as described in the Smritis, lands were cultivated in severalty in villages by Vaisyas and Sudras. The aboriginal tribes however, then as now, were governed by their own systems.

Communal system in the Punjab.

The real state of things as prevailing in the Northern and Western districts of India, was thus discribed by Mr. Fortescue, Civil Commissioner of Delhi in 1820:† "Each village is imagined to have belonged to one caste or class of persons as Jauts of Goojurs &c. The smaller villages have more generally preserved

Truth about village communities.

* Punjab Customs, 150, 161, Maine's Ancient Law, 267. Evan's Bosnia, 44.

† 28th April 1820. Revenue Selections, Vol. I, p. 371, para 6.

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their integrity in this respect than the larger which incorporated other sects and in this way often derived their numerical superiority and strength." It is from this substratum of truth that brilliant but fanciful pictures of village communities have been drawn.

It is tolerably clear from the above, that ordinarily a village consisted of many families of different castes who held in severalty, for a Brahmana and a Chandala could not and would not hold land as coparceners.* The system of communal zemindary, the *bhaichari* and the *pattidari* prevailed where the villages originally belonged to one family. The gradual development of the system of the communal Zemindary to the *Bhaichari* and the *Pattidari* systems, the family property becoming individual property, is instructive as showing how originally land which was impartible and inalienable, became partible and alienable.

Disuse of the preferential right of the eldest and impartibility.

We have seen before that the custom of the eldest son taking the entire inheritance fell into disuse, leaving a remnant in the rule that he was entitled to a twentieth part more than his brothers. But principalities could not be partible and the partition of military or service tenures could not be recognized by the State. Again lands dedicated for pious purposes, though declared by Vrihaspati to be liable to

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* The common enjoyment of pasture lands and irrigation rights did not make the village common property.

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partition, were impartible and inalienable and declared as such by all the other lawgivers.

Religious institutions of modern growth.

As for the religious institutions, they are of more recent growth. Property belonging to these institutions is considered as Debutter and is impartible and inalienable. Blackstone speaking of the old rectors of churches says: "The rector (or governor) of a Church is also properly called a 'parson,' persona ecclesiæ, that is, one that hath full possession of a parochial Church is called *parson* because by his person, the Church which is an invisible body is represented." The position of the Mohunt was similar to but not identical with that of the old rector, as we shall see hereafter. The origin and growth of these institutions is a fascinating chapter of ancient history, little studied and little known. It will be my endeavour to describe them in these lectures.

Right of the Parson.

Rules about impartible property must be sought outside the Smritis.

The Smritis are silent about the incidents of the above estates. Their rules however apply to those estates, so far as they are compatible with impartibility. For the rule of principalities, we must look to the Puranas and other historical records. There is a great similarity in the rules governing all impartible estate. India is however, so vast a country that it will be foolish to look for one uniform rule governing all such estates. Different customs have originated from different conditions. We should therefore look more to custom than to the rules of the Smritis for guidance in these

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matters. In the case also of lands attached to offices, there is a great similarity in the customs governing them, as in Rajes, but in respect to them, there is a greater divergence on account of more varied local and racial conditions. In regard to Muths, the rules of monasteries laid down by Buddha were the basis of the rules laid down by Sankara. We should try to ascertain the rules laid down by Sankara as far as possible. But the Sanyasis are very often a rule unto themselves and though owing allegiance to Sankara, know but little about him and his rules. The customs of their own establishments govern them. And rightly have the Privy Council held that the custom of an establishment must be proved in every case concerning it. Nevertheless, the orthodox and ancient rules of monasteries should be ascertained. No attempt has yet been made to do so. It will be my endeavour to ascertain them from old Buddhistic records, the records of Sankara Muths and the books about Sanyasis which are extant.

How dedications were made in Vedic times and the development of the law of endowments.

As to endowments they were originally all religious. In the Vedas, we find in the description of the Yagas, how in early times things were dedicated to the gods. A Yaga consists in parting with a thing that it may belong to a deity whom it is intended to propitiate, says the Mimansa.* The offerings become the property of the Gods. They were placed in the fire,

* Mimansa, 4-4-12.

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(*Hutavaha*)* the conveyer of offerings. Fire therefore, was the original trustee of all Debutter. That was the original law of the Aryan races. But when the Fire lost its preeminence and images of Gods came into vogue, the permanence of daily worship of the idols became an object to be secured by those who set them up. It was necessary to preserve the property dedicated and not to throw it in the fire. Endowments thus came into existence. But there were no trusts or trust deeds. Peculiar ceremonies, which will be discussed later on, were invented by which the donor was made to relinquish his right and the image was supposed to take physical possession of it.

Mode of dedication in Rome, pre-Christian and Christian.

Under the Roman law in pre-Christian ages, dedications were allowed to specified national deities by placing the gift on the altar of the God without the intervention of a trust and it became *extra commercium*.† In early Christian times, a gift placed as it was expressed "on the altar of Gods" sufficed to convey to the Church the lands thus dedicated. After Christianity had become the religion of the empire, dedications for particular Churches or for the foundations of Churches and religious and charitable institutions were much encouraged. The officials of the Church were empowered specially to watch over the

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* "Thou carriest the Homa articles making them fragrant to the Gods" Rig-Veda 10 M. 15 S. 02.

† W. and B. Hindu Law, p. 185 Ulpain Fr. XXII S. 6 Sav. Syst Sec. 88.

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administration of the funds and estates thus dedicated to pious uses, but the immediate beneficiary was conceived as a personified realization of the Church, hospital or fund for ransoming prisoners from captivity. "Such a practical realism is not confined to the sphere of law; it is made use of even by merchants in their accounts and by furnishing an ideal centre for an institution to which necessary human attributes are ascribed—(Dhadphati *v.* Guroo, 6 Bom. 122)—it makes the application of the rules of law easy as in the case of an infant or a lunatic."* Property dedicated to a pious purpose is, by the Hindu as by the Roman Law, placed *extra commercium* with similar practical savings as to sales of superfluous articles for the payment of debts and plainly necessary purposes." The Emperor of Rome forbade the alienation of dedicated lands under any circumstance and the law was the same in India.†

The Juridical person in endowments.

The above observations apply in their entirety to religious institutions as well as to charitable endowments in this country.§ In these cases it may be said that "there is a juridical person, the ideal embodiment of a pious or benevolent idea as the centre of the foundation," and that "this artificial subject

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* Sav. Syst. Sec. 90, Kinloch v. Secretary of State, 15 Ch. Div., p. 8.

† Nov. 130, Cap. 10. See Vyavahar Mayukha, Ch. IV. Sec. 7, p. 23.

§ Manohar Gonesh Tambekar, v. Lakshmanram Gobindram, 12 Bom. 247. Rupa Jagset v. Krishnaji, 9 Bom. 169. W. & B. H. L. 208, 185, 559, 555.

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of rights is as capable of taking offerings of cash and jewels as of land" and that "those who take physical possession of such property" incur thereby a responsibility for its due application to the purposes of the foundation"* Hindu Law, it has been held, like the Roman Law recognizes not only corporate bodies with rights of property vested in the corporation apart from its individual members but also the juridical persons called foundations.

Object of dedication to Gods according to Hindu Shastras.

But property dedicated to a god is like but not quite property dedicated to a religious institution like a church. A Hindu god is supposed to be a living entity who is neither an infant nor a lunatic. The gods are persons who are indifferent to the property which is supposed to belong to them. The profits of Debuttar should belong to Brahmans according to a text of Matsya Sukta.* That is a rule made by Brahmans for the benefit of Brahmans. But the true doctrine is contained in the following little known passage of the Chandogya Upanishada. "He who presents an oblation, has made an offering in all worlds, in all beings, in all souls * * * "As in the world hungry infants press round their mother, so do all beings await the holy oblations.

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* Aberdeen Town Council v. Aberdeen University, L. R. 2 App. Cas. 544.

* देवे दत्त्वा तु दानानि देवे दद्याच्च दक्षिणां ।
ततसर्व्वं ब्राह्मणे दद्यादन्यथा निक्फलं भवेत् ॥

Text of Matsya Sukta, cited by Raghu Nandan.

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They await the holy oblations."* Setting up a place of worship is the main benefit conferred. In that sense it is like a church. But the God is there apart from the image who is the holder of the property and is not a creature of law according to Hindu ideas. For practical purposes however, it would perhaps be safer to consider temples in the light of churches for the worship of Hindu gods and to apply the law applicable to the latter to them.

The scope of these lectures.

The scope of the present investigation is great. The enquiry is supremely interesting. As the field is all but unexplored, the labour required is great. We have to deal with Princes, Sanyasis and the gods. Our theme is a high one, though difficult and laborious, and we should not flinch from the necessary trouble and labour. We shall travel back with the great modern scholars to the time when the Aryan nations lived together, and from the comparison of legal ideas and the wonderful evidence given by common words find out the conditions of society and land tenures when the races parted company with each other. We shall accompany the Aryan invaders to India and ascertain their relations with the aboriginal tribes and how the land was held by them.

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* अथ य एतदेवं विद्वानग्निहोत्रं जुहोति तस्य सर्व्वेषु लोकेषु भूतेषु सर्व्वेषु चात्मसु हुतंभवति।

यथेह क्षुधिताबाला मातरं पर्य्युपासत एवं सर्व्वाणि भूतान्यग्निहोत्रमुपासत, इत्यग्निहोत्रमुपासत इति॥

Chandogya Upanishada, 5th Prap. 24 Khand 2, 5.

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We shall see whether feudal tenures in India were introduced by the original Aryans, or by subsequent invaders who are supposed to be the ancestors of the modern Rajputs. We shall trace the history of modern Rajes and see how from very inglorious beginnings most of the great houses have risen to eminence in rather recent times. Then again, we shall go to humbler paths and walk with the lords of villages of Manu, in their journey through the centuries and ascertain the conditions of their tenures in Hindu provinces. We shall converse with the ascetics of Manu and be amused by the fantastic types of Sanyasis of pre-Buddha times. We shall sit at the feet of the great Teacher and learn from him the rules of his famous Sangha and then go to Sankara and find out why and how he formed the great orders we now see. We shall also go and ask Ramanuja and Ballabhacharya why and how they formed their establishments and get an explanation from the latter of the abuses of his system. We shall go to Kabir and Nanaka and the warrior Guru and find out the rules of their establishments. We shall find out the origin of image worship in India and ascertain the history of the Gods. Beginning from the Yagas of the Vedas and the Yogakshema of the Smritis, we shall trace the history of Debutter to modern times. Last of all, we shall enjoy the pleasure of seeing how the old endowments were transmuted into finer shapes by coming

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into contact with the reason and the larger charity of Europeans and how the method and legal acumen of European lawyers have placed the law of the land on a basis certainly more methodical, legal, just and certain than what it was before their advent.

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LECTURE II.

IMPARTIBLE ZEMINDARIES AND TENURES.

THEIR HISTORY AND DESCRIPTION.

Ancient Aryan system.

We have already seen from the evidence furnished by the customs of European Aryans in comparatively modern times of the old Roman and Greek historians that among the ancient Aryans there were no Kings in the modern sense. But when the Aryan tribes migrated to the south and the west, the leader in war, the *Satpati*, began to be possessed of more power by the exigencies of circumstances than the ordinary King. The conquering general when the tribes settled in a country, became the king and a large district was allotted to him. To the followers also were allotted lands the extent of which was determined by their rank. The conquered people were as a rule reduced to the condition of serfs. The king having the largest quantity of land had the largest number of serfs. The nobles had number of serfs according to the extent of the land held by them. The despotic power of the king was the consequence of the overwhelming power which the possession of the largest number of serfs gave him. Even so late as the close of the eighteenth century, we find that almost all the soldiers, who fought in the armies of Maria Theresa, empress of Austria, and of Frederick II: were in reality

Serfs in ancient times.

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serfs.* The power given by the possession of serfs was the cause of the feudal system which sprang up wherever the conquering Aryans went. By feudalism should be understood the system under which the land was possessed by great lords under the king, who had to obey the laws established by him and to render military service to him. The peculiarities of the European system were the result of Roman legal ideas being engrafted upon pure feudalism. The gross oppressions and immoralities, sometimes found with European feudalism, were unknown in India.

Serfs in Aryan Countries.

In India and ancient Persia, we find a state of things which again is not found elsewhere. It is now established by modern scolarship that the Indian and Persian Aryans lived together for sometime before they parted company with each other. The system of caste distinguishes the southern Aryans from the Europeans. How and when it was evolved is one of the secrets which antiquity has not yet divulged. In ancient Persia we find society divided into Athravans or priests, Kshatras or the warrior caste and the Vaisus or the servile caste. In India we find the priestly caste of Brahmins, some of whom were called Atharvan Angiras, the Kshatriyas or the warrior caste, the Vaisyas or the trading and agricultural class and lastly the Sudras. It thus appears that originally

Cast in Persia and India.

* M. Dc Tocquville's France before the Revolution of 1789, p. 309.

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there were the priests and the fighting nobles and the common people who were called *Vic*. In Persia, the *Vic* or the Vaisus became the serfs of the Kshatras, as in Europe. In Europe, we find the nobles and *Vic* or the serfs. But what we miss are the Brahmins. The priests were there but in Europe, in ancient times,* learning did not flourish as early as in ancient Persia and India and the result was that the priesthood had not that preeminence among the population as in India and as they were not very much better than the rest, they disappeared when they came in contact with more civilized races.

Brahmans in ancient India.

On India, in the early morning of this world's civilization, the goddess of learning first set her feet. But she came with many fanciful gods, the chief of whom was the god of fire. The hymns for the worship of fire were among the earliest hymns of the Aryan races. Long before the Rig Veda was composed, a complicated ritual for the worship of the fire and through him, of the other gods had been developed. There was no writing and a class of men were necessary who would be versed in the ritual and the mantras. These became the Brahmanas. But it appears that in India at least the Brahmanas did not at first despise meaner worldly occupations.

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* The civilization and learning of the Greeks owed its origin to the Phœnecians, Persians and Egyptians.

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The earliest Riks speak of great conquering kings like Sudash and their more famous priests like Vasista. The genius of Sudash is of little count when compared with the power of the Atharvan Vasista, who by means of sacrifices and charms made the gods help the great king in his battles. We find the Aryan settlers living like great lords surrounded by many slaves and many cattle. We find a priesthood well versed in the complicated ritual of the Vedic ceremonies, the greatest of whom were still composing new hymns, who were paid for their services with many cattle and sometimes with the daughters of kings bedecked with golden ornaments.

The only occupation of the King was war and the performance of sacrifices. When wars ceased with the establishment of great empires, some of the emperors, *Samrats*, *Ekrats*, and the like are said to have "performed so many sacrifices that the earth was filled with sacrificial posts." The great ambition of Kings was to be like the performer of a hundred sacrifices, *Shatakratu*. The occupation of priests thus became very lucrative and they soon made themselves into an exclusive caste superior to the rest. Learning was essential to their profession and great schools were soon formed. An amount of intellectual activity was developed which seems wonderful in these days. But that activity was confined to grammar, prosody and the like, necessary for the proper recitation

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of Mantras. Astronomy, astrology and mathematics necessary for Yajnas and the measurement of places of sacrifice, were also largely cultivated. Other sciences also were cultivated which were of use to kings, namely, law, medicine, polity, the art of war, the art of training horses and elephants and the like. But the sacrificial lore overshadowed all the rest. The pre-eminence of Brahmans being thus established, they codified the law of the ancient Aryans which the conquerors had brought with them and modified them according to circumstances. In order to secure their own position, they made the law superior to Kings. They ordained rules for the conduct of Kings. Their philosophy corresponded with their self-interest.

We thus find that in early times in India, there were great Kings and a class of nobles or petty chiefs called Kshatras or Rajanyas. There were a numerous class of Brahmins. Then again, there were the common free Aryan cultivators and artisans, the Vic or the Vaisyas. And lastly there were the conquered population, who were all serfs and called Dasyus or Dases, and Sudras. The Mahabharata tells us that the Brahmans and Kshatriyas were originally one tribe (1). The

Brahmins and Kshatriyas in Ancient India.

(1) ब्रह्म चवमिह सृष्टमेकयोनि खयम्भुवा।

शान्तिपर्व्व ॥ ७४ अः १३।

चवा वै ब्रह्मणो योनिर्योनि चवस्य वै द्विजा।

शान्तिपर्व्व ॥ ७६ अः ११।

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Kshatriyas were Rajanyas or descendants of kings and chiefs. The Brahmans were quite as much a fighting people as the Kshatriyas. Bhrigu the Brahmin married the daughter of Gadhi the Kshatriya king. His son Parasuram exterminated the Kshatriyas. The causes of the struggle were the oppressions of the Kshatriyas. The immediate cause was the spoliation of the cattle of Bhrigu. Some say, it was his murder by the Haihaya King Arjuna the son of Kritavirya. The Rajanyas or nobles were exterminated. At what remote period this event, which the tradition of antiquity tells us was an undoubted historical fact, happened, it is impossible to say. It was before the time of Viswamitra and at the time of Kasyapa the Rishi to whom Parasuram made over the conquered empire, himself retiring to the Deccan. It was about the time when the Vedas were composed and it might have happened outside India but the Zendavesta contains no mention of it. Again the struggle was with the Haihaya King Arjuna and it is probable that it happened in India. However that might be, as in the French revolution, the oppressions of the Kshatriyas or nobles led to their extermination by an enraged population led by Parasuram. But republics were not the result of this revolution as they were in Rome and Greece, though republics were not quite unknown in India, for in later times about the fifth century B. C., we find Buddhistic books

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mentioning the existence of a republic of the tribe of Mallas in north Behar. Having regard to the large slave population, kings and fighting chiefs were necessary, and kings and nobles probably of Brahmin origin soon sprung up, the first of whom was Kasyapa. This explains the fact that modern Kshatriyas bear the Gotra-names of Brahmans. The Rajanyas however, were as popular as ever and the division of priests and nobles was as necessary as before. The new kings and nobles became Kshatriyas or Rajanyas. But the Brahmans had established that law was divine and binding on the kings and the Brahman had rights not possessed by others, one of them being that the property of a Brahman could never be taken by the king—a rule which reminds one of those dreadful times in remote antiquity when kings like Arjuna and Viswamitra took away by force the cattle of Brahmans. It became also incumbent on the King to be guided by a council consisting of Brahmans, Kshatriyas and other races led by Brahmans. Say what Manu may, the Brahmans had never ceased to hold lands and cattle as appear from the ancient marriage Mantras which enjoin a Brahman to give to the bridegroom land and cows and slaves, at the time of marriage.

Different castes.

When the Aryans first came to India Brahmins and Kshatriyas were one tribe of fighting men and we find Brahmans engaged

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in mechanical arts. But in India, the conquerors became all landholders and petty chiefs. The Vaisyas or the white serfs became the pastoral classes, artisans and agriculturists, and the Sudras were the serfs or slaves. The aboriginal tribes were called Dasyus or Dases. A rule of primogeniture seems to have prevailed among Brahmans as well as among Kshatriyas. If tradition speaks true, the Nambudri Brahmans were settled in the Malabar country by Parasuram and they claim to have preserved the original Brahmin customs of which primogeniture was one.

Primogeniture in ancient India.

The more considerable chiefs among early Hindus were called Samanta Rajas. These Samanta Rajas were the originals of all impartible Rajes, Polliams and other impartible tenures. Then again the officers of the king called the lords of villages, lords of ten or hundred villages, as well as the governors of towns and provinces, had all lands attached to, or the revenues of lands appropriated for, their office. The office usually went to the eldest son and these tenures became hereditary and impartible. These are the originals of Deshmukhs, Deshpandes and such other holders of office. These were either Kshatriyas or a certain Aryan caste of doubtful origin named Kayasthas who were writers of deeds, accountants and court officers. Every village had its accountant and lands were assigned to him in lieu of service. The Muzumdars,

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Pareks and Mehtas of Bombay are the descendants of the old Hindu accountants. All offices were hereditary in India.*

The younger sons of Brahmans became landless priests and pundits, the more learned or the more fortunate among them receiving grants of villages in recognition of their merit. It is to these landless poor Brahmans, we owe the learning of ancient India, and it is they who re-established the rule of the equal partition of paternal property among sons. As the lands possessed by Brahmins were very often not attached to an office, the establishment of the rule of partition was easy in their case. In the case of Kshatriyas however, it was different.

Kings chiefs of tribes.

From the time of the Upanishads, we find the Kshatriyas denominated as Kashis, Panchalas, Videhas, Raghus, Yadavas, Kurus, Haihayas and the like. The chief was called the king of Raghus, Kurus, Yadus or the Haihayas, like the chiefs of Scottish clans. From this it appears that the younger sons and their descendants were the soldiers round the chief of the tribe. Even when the Aryans came here it was, as in Germany, that the Propinquæ fought together round their chief

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* In his book on Polity Hemî Chandra the great Jain minister of Kumarapala declared the offices to be hereditary.

अङ्गरक्षान् सौविदल्लान् मन्त्रिनो दण्डनायकान्।
सुपकारान् द्वारपालान् कुर्य्याद अक्रमागतान्॥

अर्हन्नीति १ अ ४५।

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and when they settled, they settled together with their chief as king or prince or Samanta Raja under a king. Originally it appears that even in case of kingdoms, impartibility was not the universal rule, for we find many kings in the Puranas dividing their kingdoms among their sons. Even during the time of the Ramayana, we find Rama partitioning his empire among his sons and nephews. But the rule of impartibility of kingdoms is insisted upon in various places in the Ramayana, and we find Janaka mentioning that his father conquered a new kingdom that of Sankasya and made his younger brother Kushadhawaja king there, as the kingdom of the Videhas could not be partitioned. Again wherever there is mention of the eldest son succeeding to the kingdom of Ayodhya, it is added that it is the family custom of the Raghus.

Immigrations into India.

Now whatever might have been the institutions of the original Aryan settlers, they were greatly modified by the customs of succeeding waves of immigrations into India from Central Asia. The Yadavas were new comers.* The Haihayas who are mentioned in the Puranas as a sub-division of the Yadavas were no better. But they came in the Vedic times for the Rig-Veda speaks of the discomfiture of Turbasu the Yadava. We find

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* In the Rig Veda, 10 M. 62 S. 10, they are called Dasęs or aborigines. They were not considered Aryans during that time.

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Haihayas, Vahlikas, Daradas Pahlavas, Gandharas, Shakas, Chinese, Tusharas and Yavanas coming to India and settling here before the time of the Mahabharata and described by it as non-Aryans. Some of them were of Aryan origin but the great majority of them were of non-Aryan origin. It is surprising to find that all these races and even the Bactrian Greeks soon assimilated the customs of the ancient Aryans and got themselves recognized as Kshatriyas, though the Mahabharata allowed them only the status of Sudras. Things went on in this state till we come to the king Mahapadmananda, the son of the Sudra wife of a Kshatriya king of Maghada. He, it is said, attained to the rank of Chakravarti of all India and exterminated all the Kshatriyas like a second Parasurama.

The line of the nine Nandas was put an end to by Chandragupta the Maurya. The grandson of Chandragupta was the great emperor Asoka, who made all India Buddhist. The Kshatriyas as a class thus disappeared, the emperors being Sudras, though the Brahmins did not quite disappear. The old order of things was however, quite changed. The Vishnu Purana describes the kaleidoscopic change of dynasties which ruled in Maghada. Nandas were succeeded by Mauryas, Mauryas by Sungas, Sungas by Kanyas, Andhras and Abhirs, they by Sakas or Scythians, Sakas by the Yavana kings and they by Tukhars and so on. We also find the great Scythian

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king Kaniksha ruling over a great part of India shortly before or after the Christian era. It is really a marvel to find Brahmanism regaining its hold on the Indian people after a thousand years of Buddhistic rule and their its admixture with the barbarians from the West and the North. During the time of Fa Hien, India was half Buddhist and half Hindu. But kings like Samudra Gupta, Chandra Gupta II. called by some Vikramaditya and Vikramaditya VI. and Yashodharman managed to re-establish Hinduism for a time in India. But with Kashyapa the Agnihotri, who threw away the materials of fire worship into the Niranjana at the bidding of Buddha, the daily worship of the fire disappeared and never regained its supremacy. The sacrifices of cows and horses prohibited by Buddha never reappeared. With the disappearance of the Agnihotra and the other Yajnas, the old mode of life of the Aryan, divided as it was, into four periods beginning with the Brahmacharya disappeared. Brahmans and Kshatriyas began to work like Sudras. The old constitution was attempted by the Hindu kings to be re-established but only with partial success. The old order of things had completely disappeared, and with it, the old Kshatriyas. Now the kings were mostly of other castes and nationalities, who called themselves Kshatriyas because they were kings. Scythians and Paundras, Andhras and Madras, Dases and Kaibartas,

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all became Kshatriyas. In this confusion however, the village communities remained unchanged.

The great changes of dynasties and religions affected the towns and the superior classes. The agriculturists and pastoral classes, the Vaisyas, and Sudras in the villages pursued the even tenor of their ways, little affected by these changes. They worshipped the demons and village gods and married according to their own customs without Brahmins and Sanskrit Mantras and settled all their affairs by their caste Punchayets. The village headman and the accountant retained their offices. The lords of ten or hundred villages became very often petty Rajas. But only a few of them could survive the waves of foreign invasion.

System in Rajput States.

When the Muhammadans came, the most important kings of India were Rajputs, Chohans Rahtores, Shisodeas and Bhattis and others, who claimed to be of the solar or the lunar or of the fire race but many whom as Colonel Tod surmises were of Scythian origin. They were Hindus and they still remain so. It is in the States of Udaypore and Jodhpore, Jaypore and Jassalmere that we find remnants of pre-Muhammadan institutions. There we find a complete feudal system. Udaypore or Chitor belonged originally to the descendants of the great Bappa Raol. They the best of all the Kshatriyas are said to have emigrated from

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Guzerat and were probably connected with the Persian or Scythean Kshatrapas who had settled there. The land was partitioned among the sons of a king, the eldest becoming king and the rest his feudal lords. The fiefs were held on condition of military service and governed like the parent state by the law of primogeniture, the bulk of the lands of the fief going to the eldest son, the younger sons getting portions of the land as subordinate fiefs. Yodhpore was founded by Yodha. In the course of three or four centuries, the chief of Yodhpore could count upon a "lac of swordsmen all children of Yodha." There was also a sprinking of nobles of other families who by the favour of the reigning king got fiefs from him. But the great majority of the chiefs were "sons of one father." It is the repetition of the ancient story of the Kasis, the Raghus, the Videhas, the Kurus and the Panchalas. This system is the origin of all impartible estates in India as elsewhere. The admixture of a large foreign element has to a great extent made men forget the original system.

History of impartible tenures attached to offices.

The impartibility of lands attached to offices has got a different history. The ancient system of Manu with certain alterations continued to obtain in India before and after the Muhammadan invasion. It prevailed in Rajputana as described by Col. Tod and also in the Southern Mahratta country. It is in the

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Mahratta country, where Muhammadan rule was least felt and lasted for the shortest period, that we find the old Hindu system existing in its purity. Elphinstone writing in 1812 says "A turruf is composed of an indefinite number of villages, it is under a particular officer (a Naik), several turrufs, make a pergunna which is under a Deshmook who performs the same functions towards the pergunna as the *Patil* towards the village. He is assisted by a Des Pandra who answers to the *kulkarny* or village registrar. It is universally believed in the Mahratta country that the Desmooks, Des Pandras &c., were all officers appointed by some former government, and it seems probable that they were revenue officers of the Hindu Government. These officers still hold the land and fees that were originally assigned to them as wages, and are considered as servants of the Government; but the only duty they perform is to produce their old records when required to settle disputes about land by a reference to those records, and to keep a register of all new grants and transfers of property either by Government or by individuals."

The state of things in the Deccan is thus described by Colonel W. H. Sykes in his book on the Land Tenures of the Deccan (Dec. 1830). "All lands were classed within some village boundary or other. Villages had a constitution, their internal government consisting of the

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Sar Patel, or chief, assisted by a Changala, the Kulkarin, or village accountant, and the well-known village officers, the Baraballo; the numbers of the latter were complete or not, according to the population of the village, and the consequent means of supporting them. A few villages constituted a Naikwari, over which was an officer with the designation of Naik. Eighty-four villages constituted a Desmukh, equivalent to a pergunna or country. Over this number was placed a Desmukh, as governor, assisted by a Deschangala; and for the branch of accounts there was a Despande, or district accountant and registrar. The links connecting the Desmukhs with the prince were the Sar Desmukhs or heads of the Desmukhs, they were few in number. It is said there were also Sar Despands. The Sar Desmukhs, Desmukhs, Naiks, Patels, and Changalas, in short all persons in authority, were Marhattas; the writers and accountants were mostly Brahmins.

(1) Desmukhs, of such and such districts. Their rights were hereditary and saleable, wholly or in part. The concurring testimony of the people proves the hereditary right; and the proof of the power to sell is found in Brahmins and other castes, and some few Mussulmans, being now sharers in the dignities, rights, and emoluments of Desmukh. * * * The Desmukhs were no doubt originally appointed by Govern-

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ment, and they possessed all the above advantages, on the tenure of collecting and being responsible for the revenue, for superintending the cultivation and police of the districts, and carrying into effect all orders of Government. They were, in fact, to a district what a Patel was to a village; in short, were charged with its whole government.

(2) Despandahs are contemporary in their institution with the Desmukhs; they are the writers and accountants of the latter, and are always Brahmins; they are to Districts what Kulkarnis are to villages. Like the Desmukhs they have a percentage on the revenue, but in a diminished ratio of from 25 to 50 per cent, below that of the Desmukhs. Their duties are to keep detailed accounts of the revenue of their districts, and to furnish Government with copies; they were also writers, accountants and registrars within their own limits.

(3) Patels, usually called Potails, or headmen of towns and villages. The office, together with the village accountant, is no doubt coeval with those of the Desmukh and Despandah. The Sanskrit term Gramadikari, I am told by Brahmins, would be descriptive of the lord or master of the village, and equivalent to the present term Sawa Inamdar, rather than that of Patel; gram, in Sanskrit, meaning village; adikar, the bearing of the royal insignia, being pre-eniment. Originally the Patels were

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Marhattas only; but sale, gift or other causes have extended the right to many other castes. A very great majority of Patels, however, are still Marhattas; their offices were hereditary and saleable, and many documentary proofs are extant of such sales. I made a translation of one of these documents, dated 104 years ago; it was executed in the face of the country and with the knowledge of the Government. This paper fully illustrates all the rights, dignities, and emoluments of the office of Patel. He was personally responsible for the Government revenue, he superintended the police of the village, regulated its internal economy, and presided in all village councils.

(4) Kulkarni.—The next village tenure is that of Kulkarni; the office is of very great importance, for the Kulkarni is not only the accountant of the Government revenue, but he keeps the private accounts of each individual in the village, and is the general amanuensis; few of the cultivators, the Patels frequently included, being able to write or cypher for themselves. In no instance have I found this office held by any other caste than the Brahminical.

(5). Mokuddum.—The term is applied to the Patel's office. It is an Arabic term, and meaning "chief," "head," "leader," and is properly applicable to an individual only. The equal right of inheritance in Hindu children

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to the emoluments and advantages of hereditary offices, the functions of which could be exercised only by the senior of the family, rendered a distinctive appellation necessary for this person, and he was called Mokuddum. The sale of parts of the office of Patel however, to other families, the heads of which would also be "Mokuddum," rendered the qualifying adjective necessary in all writings of half Mokuddum, quarter Mokuddum and according to the share each family held in the office. Thus His Highness Seendeh (Scindiah) is six-sevenths-Mokuddum at Jamgaon, the other Marhatta sharer one-seventh, and the like in other instances.

In the case of Beema Shunker *v.* Jamas Jee (2 Moore 23, 1837) the Privy Council, in a case in which a grantee in Enam from the Government in 1803 sought to recover land enjoyed by the village officers, thus described their position: "There were certain hereditary revenue officers forming together an establishment denominated the establishment of Mehta Parek (consisting of Mujmoodars or general supervisors of accounts, of a Parek or receiver and of a Mehta or registered clerk) were attached to the Pergunna who by the virtue of their respective offices were entitled to receive certain fees amounting to the sum of Rs. 56 annually collected from the revenues of the village." These offices were held to be ancient

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and hereditary and their rights established by immemorial usage.

When the Muhammadans came to India, the state of things is well described by Mirza Mohsen, a learned authority quoted by Sir B. Rouse in his Dissertation concerning landed property in Bengal (1791). He says: "In times prior to the irruptions of the Mahomedans, the Rajas who held their residence at Delhi and possessed the sovereignty of Hindustan deputed officers to collect their revenues (kheraji) who were called in the Indian language Choudheries. The word Zemindar is Persian. On the Muhammadan conquest, the lands in Hindustan were allotted to Omra Jaghirdars for the maintenance of the troops distributed throughout the country. Several of these Omras having rebelled the emperors thought it would be more politic to commit the management of the country to native Hindus who had most distinguished themselves by the readiness and constancy of their obedience to the sovereign power. In pursuance of this plan, districts were allotted to numbers of them under a reasonable revenue (Jummah Monasib) which they were required to pay in money to the governors of the provinces deputed from the emperor."

System during Muhammadan times.

In Bengal, we find that during the Pathan period, the Muhammadan Jagirdars who at one time held most of the land, rebelled and after a sanguinary war were wiped off and succeeded

History of Zemindars.

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by Hindu collectors of revenue called Zemindars, Chowdhuries and Crories. Throughout India, except in the case of a few Rajas, whose Rajes had been recognized by the Emperor, all the old principal collecting officers and landholders of the Hindu times were superseded by the Omras and after them by the new Crories. But the Omras did not wholly cease to exist. Many of them still held large territorial possessions called jagirs and were great feudal chiefs wielding large powers like Mahabat Khan, Mr. Jumla, and the great Syyads. But during the bloody times which saw the decline and fall of the house of the great Moghul, most of the prominent Omras disappeared with the emperor. The fate of the Hindu Zemindars was not very much better.

Zemindars originally officers of the Crown.

Originally there is no doubt, the Zemindar was an officer of the Crown. The famous Fifth Report rightly describes his position in the following words: "The office itself was to be traced as far back as the time of the Hindu Rajas. It originally went by the name of Chowdree, which was changed by the Mahomedans for that of Crorie, in consequence of an arrangement by which the land was so divided among the collectors that each had the charge of a portion of country yielding about a crore of *dams*, or two and a half lakhs of rupees. It was not until a late period of the Mahomedan Government that the term *crorie* was

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superseded by that of Zemindar, which literally signifying a possessor of land gave color to that misconstruction of their tenure which assigned to them an hereditary right to the soil."

The power exercised by these Zemindars was so great that Alauddin the Khilji Emperor, who died in 1316 A.D. thought it right to curb their power by requiring the superintendents of the revenue department "to take care that the Zemindars demand no more from the cultivators than the estimates the Zemindars themselves had made."* But as Mr. Phillips in his Tagore lectures remarks, in spite of this check, the power of the Zemindars was not crushed but they regained their position and become almost independent.† In Bengal, during the time of Akbar, the Aini Akbari tells us, the entire country was under Zemindars who were mostly Kayesthas, who had to furnish 23,330 cavalry, 801,158 infantry, 170 elephants, 4,260 cannon and 4,400 boats.‡ About the end of the reign of Akbar, twelve of these Zemindars, who were probably Crories, taking advantage of the great power which their position gave them brought all the minor Zemindars under them and Bengal began to be called for a time the land of twelve Bhuyans. Two of them, Pratapaditya of Jessore, and

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* Palton's Asiatic Monarchies, 88, 89.

† Tagore Law Lecture 1875, P 66. ‡ Ayeen Akbari, P. 310.

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Sitaram of Bhushna, became so powerful as to defy the power of the Great Moghul, though they were crushed after a short but sharp struggle. The greatest of them all was a Muhammadan chief named Isa Khan whose great power the armies of Akbar could only curb and failed to destroy altogether. The power of the Zemindars was in the course of the a few years broken by the Moghuls and the authority of the central government firmly established by Shayesta Khan, Murshid Kuli Khan and Jaffer Khan. Jaffer Khan, the Subadar during the reign of Aurungzebe, is said to have removed the entire body of the Zemindars of Bengal (Patton's Asiatic Monarchies, p. 167,54) and appointed new ones, a few only retaining their old position with great difficulty.

The old Hindu Chowdhurees became the Muhammadan Crorees *i.e.* a revenue collectors of a *Chukla* yielding a revenue of a crore of dams or $2\frac{1}{2}$ lacs of rupees. "In the time of Akbar and his successors, the Crories, in obedience to the orders of the emperor, went to Court. Such among the Zemindar's relations as possessed abilities the emperor after satisfying himself on that point, nominated to the management of particular districts; and by conducting the business to his satisfaction, they obtained an allowance of *Nankar* and received the appellation of Chowdhury. The principal Zemindars it appears, over and above the

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Nankar received title and Jagirs according to their rank."*

Many cases happened in which on the death of a Zemindar, a servant or a relation got himself fraudulently appointed to the exclusion of the real heir. But the rule was that the office and the Jagirs and Nankar were impartible and devolved on the eldest son. This was not agreeable to the Government in 1792. In the Revenue letter from Bengal, 6th March 1793 (para. 8 of the Select Committee's report of 1810, Appendix No. 9, p. 100) we find the following: "The same principles which induced us to resolve upon the separation of the talooks, prompted us to recommend to you, on the 30th March 1793, the abolition of a custom introduced under the native governments, by which most of the principal Zemindaris in the country are made to descend entire to the eldest son, or next heir of the last incumbent, in opposition both to the Hindu and Mohamedan laws which admit of no exclusive right of inheritance in favour of primogeniture, but require that the property of a deceased person shall be divided amongst his sons or heirs in certain specified proportions. Finding, however, upon a reference to your former orders, that you had frequently expressed

Zemindaries impartible till 1793.

* Harington's Analysis, P. 113,—opinion of Gholam Hossein Khan, son of Fukhun-ool Dowlast, formerly Nazim of Behar, forming an appendix to the Minute of Sir John Shore, dated 2nd April, 1788.

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a wish that the large Zemindaris should be dismembered if it could be effected consistently with the principles of justice, we did not hesitate to adopt the measure without waiting for your sanction." (See also Francis's Revenues of Bengal, p. 59). This was done by Reg. of 1793 the history of which I shall describe later on. On 2nd April, 1788 Sir J. Shore (Harington, Analysis, pp. 23, 24) wrote with truth that "most of the considerable Zemindars in Bengal may be traced to an origin within the last century and a half. The extent of their jurisdiction has been considerably augmented during the time of Jafur Khan and since (1) by purchase from the original proprietors, (2) by acquisition in default of legal heirs, or (3) in consequence of the confiscation of the lands of other Zemindars, (4) instances are even related in which Zemindaris have been forced upon the incumbents." It then mentions that "the Zamindary of Dinajpore was confirmed by a firman of Shah Jehan about 1650. So the origin of the Burdwan Zemindary may be traced to the year 1680, when a *very small portion of* it was given to a person named Aboo. Nuddea and Lushkurpore Zemindars are of later date 1719."* (See Shore's Minute).

In answer to the question put by the Parliamentary Committee: "Are there many

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* Law and Constitution of India, 1825.

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districts in which the right of primogeniture is supposed to prevail?" Mr. Holt Mackenzie in 1832 (Session 1831, 32, Vol. XI., questions 2648, 2649), said: "I believe it prevailed in regard to some estates in all the provinces but is now confined to certain extensive zemindaries on the western frontier of Bengal and Behar, where the zemindars are the descendants of old Rajas who were never wholly subdued by the governments that preceded us. In cases in which it had been adopted from considerations of financial convenience, the custom was abolished by the rules of 1793."

From the above, it would appear that the custom of impartibility of large Zemindaries was abolished by the rules of 1793. From this it must not be supposed that all Zemindaries were impartible before. Those that required Sunnuds from government only were impartible, the holders being considered officers of Government.

Three classes of Zemindars.

There was however, a difference between classes of Zemindaries. Certain Zemindaries were originally Rajes, called Zemindaries in the official records. In the Appendix to the minute of Sir John Shore dated 2nd April, 1788* we find the following answer by the Roy Royan: "The Zemindars of a middle and inferior rank, and Talookdars and Muzkoories

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* Harrington, Analysis, p. 113.

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at large hold their lands to this day solely by virtue of inheritance; whereas the superior Zemindars (Chowdries), such as those of Burdwan, Nuddea, Dinajpore etc. after succeeding to their Zemindaries on the ground of inheritance are accustomed to receive on the payment of a nuzeranna, paiskush etc., a dewanny sannud from Government. In former times the Zemindars of Bishenpore, Pachete, Beerbhoom and Roshmabad used to succeed in the first instance by the right of inheritance and to solicit, afterwards as a matter of course, a confirmation from the ruling power."

It thus appears that there were three classes of land-holders. First the Zemindars whose ancestors were independant kings like that of Bishenpore, Pachete, Beerbhoom, etc., second, the large zemindars like Burdwan, Nuddea, etc. of recent origin and third, the smaller talookdars whose tenures had been carved out of the large zemindaries and who when in possession of entire villages, in many cases, succeeded in becoming independent of the superior Zemindars, during the time of the Permanent Settlement.

There is no doubt that Zemindars under the Mohammadan government are described in the Dewani Sunnuds as mere holders of offices or Khedmuts, but it was not true of the descendants of the old Rajas, like those of Bishenpore.

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The Zemindars and Talookdars very often contrived to absorb the functions or at least the chief emoluments of the headman and to displace him to a great extent. The famous twelve Zemindars, who held Bengal during the later part of the reign of Akbar in royal estate, were called Bhuyans or Prodhans. There was a class of people in Bengal and Behar, as in the rest of India, who were headmen of villages, called Pardhans in Chotanagpore, Munduls or Mucadims in Bengal, Bhuian, Gand or Ganda, Potail or Patel in other parts of the country. The position of the headman is thus described by Sir John Shore (June, 1789). "He assists in fixing the rent, in directing the cultivation and in making collections. Their power and influence over the inferior ryots is great and extensive; they compromise with the farmers at their expense, and procure their own rents to be lowered. They make a traffic in pattahs, lowering the rates of them for private stipulations, and connive at the separation and secretion of lands." In Halhed's Memoir on the land tenure and principles of taxation in the Bengal Presidency, Purdhans are thus described: "The Mohamedans are, in some pergunnahs, considered as executing their office of Purdhan or Mokuddum under an original hereditary right, coequal with that which sanctions the succession to patrimonial property in the soil; in some

Prodhans and Zemindars.

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instances, the Purdhanee is included in the Zemindary claims advanced by individuals, and its existence is acknowledged by the other proprietors. Instances of the office being sold by the incumbent are on record; in general, however, the Purdhan's continuance in office depends upon the degree of consideration he enjoys in the eyes of those of his fellow-parishioners who are landowners, and who could, by direct or indirect means, secure his dismissal, if he neglects their interests. On the office falling vacant, the eldest son of the late incumbent, or a near relation generally succeeds. The original office of a Purdhan or Mokuddum appears to have been very similar to that of the Gramadhiput of the Hindu system; he is a public officer; arranges all the revenue details of his parish; is the magistrate of the village, and with the assistance of the Chowkidars or night watchmen superintends the police of it." Many Zemindars and Rajas were evolved out of the humble village headman. It is said that the Raja of Benares attained his position in this way.*

Prodhans Moulas and Samantas of the Niti Shastras.

Under the Hindu system as described in the Manu Smriti and Kamandaki Nitisara and other Niti Sastras,† there were Pradhans or

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* Tagore Law Lecture of 1875 p. 64.

† The authors of books on polity are mentioned in the Mahabharata (Santi Parva 58 Ch. 1-3) to be Vrihaspati, Sukra, Indra, Pracheta, Manu, Bharadwaja and Goursira. We have now a book on polity by Sukra called Sukra Niti and Kamandaki's Nitisara. The other books seem to be lost.

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Maulas and Samantas. The Samanta Rajas or dependent Rajas were to be twelve in number. This may have been the origin of the tradition that Bengal under the Pal Kings was under twelve Bhuyans or Bhuswamis and that there were twelve Bhuias in Assam, as well as in Arracan.

Zemindars declared proprietors and not officers.

I have given you a short history of the Zemindar, who was, except in the case of an ancient principality, originally an officer of State. I have also described how he came to be considered the owner of his estate. It was not however, without a challenge in the Courts of law that the position of Zemindars as owners of estates was established. An attempt was made about the end of the eighteenth century to enforce bond debts. against Muffussil Zemindars in the Supreme Court of Calcutta on the ground that they were officers of State. The then Advocate-General, Sir John Day, taking the Persian words in their literal sense declared the Zemindars to be landholders and therefore not amenable to the jurisdiction of the Supreme Court. On this, the Government acted, as Mr. Halhed says. "The Governor-General and his Council were committed in their opinions to vindicate the plea set up against the jurisdiction of the Supreme Court by admitting that the Zemindars were landholders and held their lands and right be

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inheritance." The Supreme Court upheld the Zemindars' contention.*

Indeed, it is true, as Mr. Holt Mackenzie stated in 1832, "that the Zemindars of Bengal, though many of them held originally a mere office, must be considered as having been vested by our settlement with the property of everything within their Zemindaries, which belonged to the Government and was not reserved by it."† Indeed, whatever might have been the position of the Zemindars in former times, since the Permanent Settlement, they must be considered as proprietors of estates.

With the exception of a few princely houses in Behar and Chotanagpore, all the Zemindar and Raj houses are of recent origin. If would serve no good purpose to relate their humble origin or the not very glorious deeds by which they acquired their Zemindaries. None of them acquired them by any great service to the people or the King. Many of them have distinguished themselves by acts of public beneficence and I believe in these enlightened times, they will all ennoble their houses by great and good actions and establish claims to nobility higher than the nobility of ancient origin.

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* Rouse's Dissertation concerning landed property in Bengal, p. 45.
† Halhed pp. V., VI.

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I shall now give you a short description of some of the more important impartible tenures.

Impartible estates and tenures of Orissa.

The whole of Orissa was at a time under the Gajapati kings of Cuttack. The country had been parcelled out by them to certain military chiefs called the Garjat Rajas. When the Orissa king was deprived of his power, the Garjat chiefs did not disappear. They continued to hold their lands and dignities under the Muhammadans, the Mahrattas and also under the English. Their customs were ascertained by what is called the Pachees Sawal.

In Orissa, we have the old Hindu system better preserved than in other parts of the country. I have told you of the military chiefs. There are also tenures attached to every possible office. We have the following tenures there: Taluk Sadar Kanungo (accountant) Taluk Wilayite (assistant) Kanungo, Taluk Chowdhari or khandpati or khandait, Taluk Mukaddam or Pradhan (head of a village of Manu), Taluk Pursette or Pura Sresti (head of a Town of Manu), Taluk Sarbarkari, Taluk Mahapatra or great minister, Taluk Raj Garu or royal preceptor, Taluk Pabraj or chief among Brahmans, Taluk Santra or border chief, Taluk Bhatta or bard, Taluk Bara Panda or great pundit, Taluk Malbahar or great athlete, Taluk Maratha or great warrior, Taluk Das or servitor, Taluk Mahanti or of great heart, Taluk Patnaek or chief lord, Taluk Utsal Ranajit or exalted

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conqueror, Taluk Bairi Ganjan or conqueror of enemies, Taluk Dandrai or club—loving lord, Taluk Dakshin Rai or lord of the south, Taluk Srichandan or mild as white sandal wood, Taluk Harichandan or sweet as yellow sandal wood, Taluk Sudhakar or receptacle of nectar, Taluk Madanra or lovely as cupid, Taluk Nisankar or fearless lord, Taluk Bhumia or landed proprietor.* These tenures were created by the Gajapati kings. Many were originally impartible. Now most of these have become partible.

Impartible estates and tenures of Chotanagpore.

In Chotanagpore, it appears there were at some ancient time three or four independent chiefs, who in their turn had created military tenures held by persons called Tekaits *i.e.* persons who had the royal mark on their foreheads which, it is said, was given by the right toe of the superior chiefs. These Tekaits have managed to survive the changes of dynasties. They are now quite independent of their superior chiefs.

Ghatwals

Then again, under the chiefs of Chotanagpore, Pachete, Birbhoom, Kharagpore, Gidhour etc., there were guardians of passes called Ghatwals, who had lands granted to them in lieu of service. Many of these Ghatwals became in recent years independent of their chiefs.

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* Hunter's Statistical Account of Bengal, Vol. 18, p. 129.

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Oude Talookdars

We next come to the Oude Talookdars. They were the great barons of the province who existed before the conquest of it by the British. Many of these estates were confiscated after the Mutiny. Those that were maintained became the subject of Act III. of 1865. They were classified and their rights to some extent determined by that Act. Section 9 of the Act enacts that there should be:

"1. A list of all persons who are to be considered Taluqdars within the meaning of this act;

2. A list of the Taluqdars whose estates according to the custom of the family on and before the thirteenth day of February 1856, ordinarily devolved upon a single heir;

3. A list of the Taluqdars, not included in the second of such lists, to whom sanads or grants have been or may be given or made by the British Government up to the date fixed for the closing of such lists, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

4. A list of the Taluqdars to whom the provisions of Section twenty-three are applicable;

5. A list of the Grantees to whom sanads or grants have been or may be given or made by the British Government, up to the date fixed

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for the closing of such list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

6. A list of the Grantees to whom the provisions of Section twenty-three are applicable." Section 23, runs as follows: Except in the cases provided for by Section twenty-two, the succession to all property left by Taluqdars and Grantees, and their heirs and legatees, dying intestate, shall be regulated by the ordinary law to which members of the intestate's tribe and religion are subject.

Vatans of Bombay.

In Bombay and Madras, as we have seen before, the Hindu system was maintained till very recent times. The service tenures of Bombay have been described above. These were called Vatans. They were hereditary tenures granted by Hindu kings to village and district officers like Desmukhs, Despandes &c. The Bombay Act 3 of 1874 and Act 5 of 1886 were passed to declare their inalienable character and to regulate their incidents. In Madras also, these village officers had lands attached to them, one instance of which is that of Karnum or accountant.

A Saranjan or grant in Jagir is a grant of the revenue not of the soil in consideration of services rendered. This was the usual mode of recognizing merit among Hindu and Muhammadan kings.

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In Madras, where Hindu kingdoms maintained their independence longer than in other parts of India, we find a system of feudal tenure which is a counterpart of that of the Tekaits of Chotanagpore. These chiefs also were never really subjugated by the Muhammadans. They were originally dependent Rajas, who held on military tenure and owing allegiance to the great independent Kings of the South like those of Vijayanagar. They will be more fully described in the next Chapter.

Dayadi Pattans of Madras.

The Dayadi Pattans of Madras are peculiar tenures like the Shashanas of Orissa. The Hindu kings granted villages to learned Brahmans under copper plate grants called Shasanas. These were partible, except in Madras, where among the Nambudri Brahmins, the custom of succession of the eldest son prevailed. But in these cases and in other cases, where without a grant a village was held by a family, which was therefore called a Dayadi Pattan, *i.e.*, a settlement of a family, the custom of one member being the manager prevailed. This peculiar custom will be fully described in its proper place.

Tarwads.

Akin to these are the Tarwads of the Nairs, where also the land is held by a family under a manager called Karnarvan, and also the estates of the Tiyars and the Illuvans of Palighat held by non-Brahmin castes among whom peculiar rules of succession prevail. The incidents of such tenures will be described in the next chapter.

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History of some estates.

I now proceed to give you the history of some typical important impartible estates, so that you may have a complete idea of the subject. The history of the more important Rajes is the history of India. Unfortunately, none of them date back to the Hindu period, except the Rajput chiefs and perhaps the Rajas of Tippera and Manipore, who claim descent from kings contemporaneous with the Pandavas. It is difficult to believe their story but it is certain that there were Kings of Tippera and Manipore at that time. There were also the mighty Kings of Assam, mighty even in the time of Hauen Thsang, who disappeared and were succeeded by Ahom Kings.

The great chief of Chitore or Udaypore has got a record of the doings of his family from very ancient times. They are described in the annals of Rajsthan by Colonel Tod, which are perhaps, the only history of India in pre-Muhammadan times. The glory of the Hindus passed away with the defeat of Prithvi Raj of Delhi and the death of Amar Sing of Chitore, on the fatal field of Tirouri or Thaneswar. The Hindus have no proper histories. The kaleiodospic change of dynasties described before made the writing of history impossible. There could be no continuance of the records of kingdoms owned by various dynasties of various races. It is only from the copper plate grants that we glean some little information

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of some houses. All this is outside the scope of these lectures. This lecture has become more historical than legal. The history of customs however, it should be remembered, enables us to ascertain the true law. I have already described the feudal system prevailing in the Rajput States. I shall now give you the history of some of the typical houses among Zemindars, and I shall finish my lecture with it.

Kharda Raj.

First and foremost among chiefs is the Raja of Kharda. He represents the Gajapati Kings, who ruled over a large portion of the Deccan and western Bengal, and maintained their independence till very recent times. They were conquered by the Muhammadans under Kalapahar, who in their turn were conquered by the Mahrattas and on the overthrow of the latter, came under the British. All the Garjat chiefs and many chiefs of the Madras Presidency were their vassals. The present representative is a heavily indebted chief and it is not unlikely that the house will shortly be extinct.

Ramgurh Raj.

Next, let us take the house of Ramgurh or Ichak. It is a very ancient Raj, originally of the nature of a principality. About the year 1772, Mukund Sing the then Raja was found in arms against the British Government and his estate was forfeited and bestowed upon another member of his family, by name Tej Sing, for his services, not of the most glorious kind, with

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the title of Maharaja and it has since then, descended to his heirs in the male line. On 17th November, 1813, in a suit concerning the property, it was declared by the Court of Sudder Dewany to be indivisible. In 1872, Maharani Hiranath Koer on the death of her infant son the then Maharaja, claimed by right of female succession but her claim was disallowed by the High Court (Maharani Hiranath Koer *v.* Babu Ram Narayan Sing, 9 B. L. R. 305).

Pareshnath Raj.

We next go to the Raja of Pareshnath. The house has existed from remote antiquity. The Rajas are the custodians of the shrine and of the Jaina temples on the hill of Pareshnath. Though Hindus they exact homage from all Jainas visiting the shrine, for reasons now forgotten. Here we have got a house, which might have enlightened the dark and ancient history of the Jainas, but being cut off from the outside world in their native forests, they lapsed into semi-barbarism and have got no records of their own.

Doomraon Raj.

The house of Doomraon is one of the noblest in Behar. They claim direct descent from the great king Bhoja (6 Moore 187). Their principality is called Bhojpore, and their caste preeminence as Chohan Kshatriyas is admitted on all hands. They preserved a sort of semi-independence during the Muhammadan period. We have got records of generations of chiefs who have all been Chohans. The present

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occupant of the Gadi is the widow of the late Maharaja.*

Ramnagar and Hutwa Rajes.

We next go to the houses of Ramnagar and Hutwa. They have a remarkable history. Raj Ramnagar belonged at a time to Nepal. It represented one of the principalities in which ancient Nepal was divided under the suzerainty of its Kings. When Ramnagar was conquered by the Muhammadans, the Rajas continued to retain their possessions and when the English came, they accepted them as overlords. They were always semi-independent chiefs but became Zemindars under the British Raj. They are Nepalis by descent. The present Raja, who is the daughter's son of the late Raja, is a direct descendant of a king of Nepal.

The Hutwa or the Hunsapore Raj was an ancient tributary principality and it has been held as an entire estate in the same family for upwards of 200 years when the suit about it, well known as the Hunsapore case, came before the Privy Council. The common ancestor was Raja Beer Sein and each successive possessor of the Raj during the whole of that period had been sole heir of the Raja last seized, and the eldest or nearest in the line of succession, without a single instance of the succession of the relations of any heir succeeding as co-parceners or joint heirs to the

* Since the above was written, she died and has been succeeded by an aguate in preference to her daughters after two suits, which have ended in compromise.

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ancestral estate. The other descendants of each successive Rajah were entitled only to an allowance out of the estate for maintenance and support. This course of descent to the rights in the Raj continued uninterruptedly down to one Rajah Futteh Sahee who, in the year 1767, was expelled from his possessions by force of arms, and the Raj was confiscated and taken possession of by the East India Company. From that period until the year 1790, the Raj remained in their possession, and they leased the same to farmers. In that year the East India Company after repeated applications by members of the deposed Rajah's family for its restoration, by a Firman granted the Raj to Chutturdharee Sahee, the representative of a younger branch of the family, and put him, then a minor, in possession, and afterwards conferred on him the title of Rajah. Rajah Chattardharee Sahee had issue of two sons, who predeceased him. The eldest Ram Sahee, left two sons Ongur Pertab and Babu Deoraj Sahee, him surviving, and the younger son Puthee Paul Sahee, also left two sons, named Tilluckdharee Sahee and Babu Beer Pertab Sahee. Ongur Pertab had issue a son, Maharajah Rajendra Pertab Sahee, whom it was alleged, Maharaja Chatturdharee Sahee, the day before his death, verbally appointed to succeed, to the Raj as his heir, and installed him as Rajah. It appeared that the Maharajah

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afterwards executed a written Will, or testamentary disposition, dated the 16th March, 1858, shortly before his death, appointing Maharajah Rajendra Pertab Sahee, his great grandson, his sole heir and successor to the Raj. The result of the protracted litigation was that Maharaja Rajendra Pertab's title was confirmed.

Durbhanga Raj.

The house of Durbhanga has also a remarkable history. We know of the ancient Kings of Mithila and the law of the Mithila School which they administered. During the dark period of the Muhammadan rule, Sanskrit learning had its refuge in the mighty southern kingdom of Vijayanagar where Madhava flourished and in the kingdom of Mithila which maintained its independence even after the fall of Vijayanagar. Mithila was the last refuge of Sanskrit learning. Here flourished Udayanacharya whose genius and learning vanquished the Buddhists and the logic of whose arguments is even now considered irrefutable in India. It was here that Vachaspati Misra, whose learning and versatility rivalled that of Madhava, flourished. Then there was a time when Chandeswar the great minister of King Harising Deo, and the author of the Vivada Ratnakara, conquered Nepal and had himself weighed in gold by performing the Tula ceremony on the banks of the Bagmati river in the year 1315. Up to the fifteenth century, the house of Mithila

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maintained its power. After that, the Muhammadans got the upper hand. One Mohesh Thakoor was a priest of the last king of Mithila when the country was conquered and the line of the old kings became extinct. Either Mohesh Thakoor or his disciple Raghunandan Thakoor went to Delhi and by his abilities or by representations now difficult to ascertain, obtained from the Emperor Akbar the Zemindary grant of Raj Durbhanga for Mohesh Thacoor. This was in the beginning of the sixteenth century. Since that time there has been an unbroken succession in the eldest male line of thirteen Rajas, the custom supposed to govern the family being that one Raja abdicates in favour of his successor during his lifetime.

Soosung Durgapore Raj.

In the case of Soosung Durgapore, in Mymensing in Bengal, it appears that it was granted as a jagir on military tenure to a Bengalee Brahmin by name Raja Ramjibon in 1650 by the Emperor Shah Jehan and was again conferred on his son Raja Ram Sing by a firman of the year 1680 granted by the Emperor Aurangzebe. In an early case before the Sudder Dewany Court, the estate was held to be impartible descending only to males. But in a later case, the Privy Council held that the custom had been abandoned and the ordinary rules of succession applied (Rajkissen Sing *v.* Ramjoy, 1 Cal. 190.)

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Shivagunga Zemindary.

Let us take two typical Madras Estates. The first one is the Shivagunga Zemindary, which has been the subject of much litigation. It was created by Saadut Ally Khan Nabob of the Carnatic in the year 1730 and was given as an hereditary fief by him to Shasavarna Odaya Taver of the family of Nabooty of the Marawa caste, as reward for his military, services. Shasvaran was on his death succeeded by his only son Vadooganada who was killed in battle. Vadooganada had an infant daughter by his wife, Ranee Velu, but no other child. It appeared that two persons named Velu Murdoo and Cheima Murdoo then usurped the actual government of the Zemindary, and ultimately wrested from the Nabob of the Carnatic his acquiescence in the nominal tenure of the Zemindarship by Ranee Velu. Velu gave her daughter by Vadooganada in marriage to one Vengam Odaya Taver. The daughter died in giving birth to her first child, and the child survived its mother but a short period. Both died in the lifetime of the Ranee Velu, who was thus left issueless. The parties who then appeared to be entitled to the Zemindary were two brothers, Oya Taver and Gowery Vallabha Taver, collateral descendants from the progenitors of Shasavarna. Gowery Vallabha Taver was at this time about twenty-nine years age. Oya Taver was his senior in years, but sickly and infirm. The two brothers were

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the nearest relations of Vadooganada, and also of Shasavarna. Vella Murdoo and Chinnce Murdoo, on the deaths of Ranee Velu, expelled Oya Taver and Gowery Vallabha Taver from the Zemindary and joined a rebellion against the Government. This rebellion was put down by the East India Company. By the Treaty of the 12th of July, 1792, all sovereign power over the Poligar countries, including the Zemindary of Shivagunga, was transferred in perpetuity by the then Nabob of the Carnatic to the East India Company. By a proclamation of Lord Clive, dated the 6th of July 1801, the Government transferred the Zamindary, which, it appeared was treated by the Government as an escheat for want of lineal heirs, to Gowêry Vallabha Taver, otherwise called Permettoor Warrin Taver, or Woya Taver, who was collaterally descended from the progenitors of the first Zemindar, and appointed him Zemindar of Shivagunga. By a sunnud-*i*-milkeat Istimrar, or deed of permanent settlement, dated the 22nd of April 1803, the Zemindary was confirmed to Gowery Vallabha Taver to hold in perpetuity, with power to transfer the same by sale or gift, on payment to the Government of a permanent annual Jamma. From the time of his investiture in 1801, until his death in 1829, Gowery Vallabha Taver continued the sole Zemindar. The estate has been the subject of much litigation and many suits, which have

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established that there may be two rules of succession in the property left by a person, the ordinary rule of inheritance applying to his self-acquired property and the rule of survivorship to his joint family impartible property, that the widow, daughter or daughter's son who is senior of his or her class succeeds to a Raj and other rules of Hindu law of impartible property which will be described hereafter.

Polliem Nargunti.

Let us now take up the case of a Polliem Nargunty Polliem was an ancestral estate held on millitary tenure from the time of the Hindu Kings. It was held by a family of the name of Naidoo when the East India Company acquired the sovereignty of the District and assumed possession of all Polliems in the neighbourhood. They ultimately however, restored the Polliem Nargunty to the Naidoo family, different members of which were at different times Polligors or sole holders or managers. The Privy Council held that though it belonged to a joint family, it was impartible and the nearest male coparcener was entitled to succeed in preference to the widow of the last holder (9 Moore 66).

It is useless multiplying examples of various estates and tenures. Many of them will be dealt with leter on when the incidents of impartible estates are described.

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LECTURE III.

INCIDENTS OF IMPARTIBLE ESTATES AND THE RIGHTS AND LIABILITIES OF HOLDERS OF SUCH ESTATES

Can impartible estates be joint family property.

We have to deal in this lecture with the incidents of impartible Rajes and other tenures. The first question we have to consider is, can impartible estates be joint family property subject to the rule of survivorship and having the incident of inalienability? We know that in ancient India, the kingdoms were kingdoms of certain families—the Kashis, the Panchalas, the Videhas, the Kurus, the Kekayas, the Yadus, the Haihayas and the like. We have no indication in the Puranas of a kingdom being considered as belonging to a joint family. In the Mahabharata, Duryodhana makes it clear by saying that if Yudisthira became king, he and his descendants would be merely his dependants. Some of the ancient kings divided their kingdoms among their sons (See Devi Bhagabat and Ramayana). We find in the Ramayana, Janaka saying that his younger brother was put in charge of affairs in his kingdom by his father and he conquered another king and placed him on the throne of the latter. Indeed, if a Raj be considered as joint family property, the brother of a Raja, if older than his son, should have the preferential right to succeed to the Gadi, like

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the Kurta of an ordinary joint Mitakshara family. But that was not the rule. Early cases no doubt established the rule that a Raj can have the incidents of a Mitakshara joint family property and a brother would succeed by right of survivorship excluding a widow. There is no indication of the rule of survivorship in the Smritis or in the ancient commentaries. The ancient commentators did not allow the widow any heritable rights. It was Vijaneswara who for the first time established her right. Later commentators in their zeal to reconcile the conflicting texts of the Rishis, some excluding the widow and others declaring her right, laid down that the former applied to a joint family and the latter to a separated member. Among these commentators, were some famous dialecticians, notably Vachaspati Misra, and we find them inventing a reason for the exclusion of the widow by lying down that in a joint family an individual member had no ascertained or ascertainable share and thus on his death the other members remained in possession of the entire family property in the very nature of the thing. But clever as it is, like all false reasonings, it has got a fatal flaw. All the Smritis and the commentators allow the son of a deceased member the right to step in his shoes and on partition, the property is divided not *per capita* but *per stirpes*. This rule is

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wholly inconsistent with survivorship. The question, therefore, still remains, if the son can represent the father in the joint family, why can not the widow of a sonless man. The ordinary rule of inheritance applies in the case of a joint family and the exclusion of the widow can not be explained by the dialectician's principle of the non-ascertainability of the share of a member. In any case, a Raj connot be a joint family property. The Mimansa has very clearly laid down that a king was the holder of a divine office and neither he nor a subordinate prince has any property in his kingdom. (See p. 20 21.) Therefore according to ancient Hindu Law, Rajes, if they be considered as remnants of ancient principalities, cannot be the property of their holders, far less can they be joint family property. Nor can holders of land on condition of personal service, military or civil, be considered to hold it on behalf of joint families. It is however, easier to set right a mistaken piece of legislation than to set right an erroneous decision of a Court. The Privy Council as early as 1864, in the famous Shivagunga case, held that an impartible Raj can be joint family property. But in that particular case, the property was held to be self-acquired and though there were no positive texts about succession to self-acquired property, it was held to be governed by the ordinary

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rule of inheritance and the widow succeeded.

The state of the law in 1872 is thus prescribed by Sir Richard Couch in the case of Maharani Hira Nath Koer *v.* Ram Narayan Sing (9 B. L. R. 323) "Markby J. referred to Katama Natchier *v.* The Rajah of Shivagunga (1) as an instance of a woman succeeding to a Raj, and near the end of his judgment said, that between impartibility and the exclusion of females, there is no connection whatever. That need not be disputed. It is not upon the impartibility of the estate, but upon the family being undivided, and the law of succession to ancestral undivided property, that the exclusion of females rests. This appears clearly in the Shivagunga (1) and subsequent cases. The zemindari of Shivagunga was created in 1730 by the Nabab of the Carnatic; and by a proclamation of Lord Clive, dated 6th of July 1801, the Government transferred the zemindari, which, it appeared, was treated as an escheat for want of lineal heirs, to Gawery Vallabha Taver, who was collaterally descended from the progenitors of the first zemindar. By a Sanad, dated the 22nd of April 1803, the zemindari was confirmed to him in perpetuity with power to transfer it by sale or gift, on payment to the Government of a permanent

Maharani Hira Nath *v.* Ram Narayan.

(1) 9 Moore, 539.

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annual jumma. By the decree appealed from the son of Oya Taver, the elder brother of Gawery Vallabha Taver was held entitled to the zemindari in preference to his surviving widow, on the ground that they were undivided brothers. In the judgment of the Judicial Committee, page 605 of the report, it is said that the substantial contest was whether the zemindari ought to have descended in the male and collateral line, and the determination of that issue depended on the answers to be given to one or more of the questions :—first, were the brothers undivided in estate, or had a partition taken place between them? second, if they were undivided, was the zemindari the self-acquired and separate property of the younger? And if so, third, what is the course of succession, according to the Hindu Law of the south of India, of such an acquisition, where the family is in other respects an undivided family? From these questions, it is clear that the Shivagunga case (1) was different from the present; and the decision in it is not applicable. But the law applicable to it is stated in the judgment at page 589 of the report where it is said that "if the Zemindar, at the time of his death, and his nephews were members of an undivided Hindu family, and the zemindari, though impartible, was part of the common family

(1) 9 Moore, 539.

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property, one of the nephews was entitled to succeed to it on the death of his uncle." We have thought it right to refer to this case at some length on account of the reference to it in Markby J.'s judgment. Another authority for the exclusion of females, where the property is ancestral and the family undivided, is in the judgment of the Privy Council in Jowala Buksh *v.* Dharum Singh (1), where it is said that the legitimate male heir of the great ancestor, would have taken the Raj on the death of his uncle to the exclusion of the widow, if the property was assumed to be ancestral and the family undivided; as in the case of Katama Natchier *v.* The Rajah of Shivagunga (2), it was admitted that this would have been the course of descent according to the Mitakshara, if the property had been ancestral; the reason of the decision in that case having been that the Shivagunga Raj was the separate acquisition of the deceased. And in the judgment of the Privy Council in a later case, Rajah Suraneni Venkata Gopala Narasimha Row Bahadoor *v.* Rajah Suraneni Lakshma Venkama Row (3), it is again said that in the Shivagunga case the impartible zemindari was shown conclusively to have been the separate acquisition of the person whose succession was the subject of dispute, and the ruling of the

(1) 10 Moore, 533. (2) 9 Moore, 539. (3) 13 Moore, 113 at p. 140.

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Court was that this Zemindari should follow the course of succession as to separate property, although the family was undivided but that if that Zemindari had been shown to have been an ancestral Zemindari, the judgment of the Board would, no doubt, have been the other way.

There is however, the judgment of the Privy Council, known as the Tippera case, in which a different view was taken, and which we are unable to reconcile with the previous decisions. In Neelkrisfo Deb Burmon *v.* Beer Chunder Takoor (1), their Lordships say at page 540 of the report :—" Still when a Raj is enjoyed and inherited by one sole member of a family, it would be to introduce into the law by judicial construction a fiction, involving also a construction, to call this separate ownership, and so to constitute a joint ownership without the common incidents of co-parcenership. The truth is, the title to the throne and the royal land is, as in this case, one and the same title ; survivorship cannot obtain in such a possession from its very nature. and there can be no community of interest ; for claims to an estate in lands and to rights in others over it, as to maintenance for instance, are distinct and inconsistent claims. As there can be no such survivorship, title by survivorship where it varies from the ordinary title by heirship cannot, in the absence of custom, furnish the rule to ascertain the heir

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to a property which is solely owned and enjoyed, and which passes by inheritance to a sole heir."

But in a later case, we find their Lordships adhering to the law laid down in the earlier cases. In the judgment in Stree Rajah Yanumula Venkayamah *v.* Stree Rajah Yanumula Boochia Vankondora (1), after stating that the question upon which the parties in the suit joined issue and went to trial was, whether the family of which the plaintiff and the appellant's husband were members was an undivided or a divided Hindu family, and that the Courts below had properly decided that issue in favour of the plaintiff, they say: "Accordingly, the strength of the argument of the learned Counsel for the appellant has been directed to show that this case should be governed by that in the ninth volume of Moore's Indian Appeals, which is generally known as the Shivagunga case (2). They have gone so far as to argue that the estate in question in this case being impartible, must, from its very nature, be taken to be separate estate, and consequently that, according to the decision in the Shivagunga case, the succession to it is determinable by the law which regulates the succession to a separate estate, whether the family be divided or

(1) 12 Moore 523, 3 B. L. R. P. C. 13 (2) 13 Moore, 333.

CENTRAL LIBRARY

undivided. The authority invoked however, affords no ground for this argument. The decision in the Shivagunga case (1) will be found to proceed solely and expressly on the finding of the Court that the Zemindari in question was proved to be the self-acquired and separate property of Gowery Vallabha Taver." And after quoting from the judgment, they say : "It is therefore clear that the mere impartibility of the estate is not sufficient to make the succession to it follow the course of succession of separate estate. And their Lordships apprehend that, if they were to hold that it did so, they would affect the titles to many estates held and enjoyed as impartible in different parts of India." And in observing on the evidence as to the estate being the separate property of the appellant's husband, they say : —"These grants, by way of maintenance, are, in the ordinary course of what is done by a person in the enjoyment of a raj or impartible estate, in favour of the junior members of the family, who, but for the impartibility of the estate, would be co-parceners with him." This judgment is closely applicable to the present case. There is here an ancestral impartible estate and an undivided family, for there is no proof that the family of Tej Sing had become divided, and no issue was raised as to that. If

(1) 9 Moore, 539.

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there had been no evidence of custom in the case, we should have held, upon the authority of the decisions we have referred to, that the plaintiff is entitled to succeed to the estate. The evidence, oral and documentary, is fully stated in the judgments in the Division Court, and it is not necessary to re-state it. It shows that on the only occasions since the grant of the estate of Tej Sing, when a female might have inherited she was excluded. It is true that, in both cases, a brother succeeded in preference to the widow of the deceased, but this could only be justified by the family being an undivided one ; and the undivided family was not that of Sidnath Sing, the father of the brothers, but of Tej Sing, of which family the plaintiff is a member. And that this succession was not allowed, as was argued by the appellant's counsel because a brother was to succeed, is we think shown by the return made by Shambunath Sing on the 25th June 1846, in which he acknowledged the plaintiff as heir next in succession to his surviving brother, Ramanath. The plaintiff's claim is, therefore, supported by such evidence as there is of a custom in the family. It does not, in our opinion, depend upon a local custom, and probably the instances which appear to be evidence of a local custom may all be explained by the rule of law which, we think, is established by the authorities we heve quoted.

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The judgment of Markby J. for the defendant appears to be founded on the assumption that the succession was governed generally by the rule of inheritance of separate property according to the Mitakshara, treating separate as if it were self-acquired, and this is supported by the judgment in the Tippera case—Neelkristo Deb Burmono *v.* Beer Chunder Thakoor (1); but all the other authorities appear to show that this is not correct. Where the property is ancestral and the family undivided, a custom modifying the law must be a custom to admit females, not a custom to exclude them." Subsequent cases of the Privy Council have established that an impartible estate can be joint family property in which the Mitakshara rule of survivorship applied (2).

In the case of Raja Ram Narain Sing, *v.* Pertum Sing (3), in 1873, the Calcutta High Court held that in an impartible ancestral Raj the father could not alienate property except for justifying necessity as in an ordinary Mitakshara joint family.

In 1874, however, the Calcutta High Court came to a different conclusion in the case of Kapil Nath *v.* Government. (4) The Privy

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(1) 12 Moore, 523.

(2) Raja Rup Sing *v.* Rani Baisni in 11 I A. 154. Chowdhury Chintamoni Sing *v.* Noulukho Koer, 2 I. A. 233. Rani Parbati *v.* Jagadumba, 29 I. A. 96.

(3) 11 B. L. R. 397.

(4) 22 W. R. 17.

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Council in the case of Sartaj Kuary *v.* Deoraj Kuary (1), held that the son was not a co-sharer with the father in the case, of an ancestral impartible Raj. In that case, their Lordships of the Judicial Committee thus define the nature and incidents of an impartible estate under the Mitakshara Law.

Impartible property not necessarily inalienable.

"The Judges of the High Court have quoted, in support of their view, passages from several judgments of this committee. In all of them the question was as to the succession to the property on the death of the Raja or Zeminder, and it was held that for the purpose of determining who was entitled to succeed, the estate must be considered the joint property of the family. The statement in the Shivagunga case (2) "the Zeminderi, though impartible, was part of the common family property," must be understood with reference to the question which was then before their Lordships. The question of the right of an eldest son or other son to control the father did not arise in that case. In Periasami *v.* Durga Kunwari (3) it is evident from what is quoted by the High Court that this question was not considered. In Periasami *v.* Periasami (4) the language is more guarded. It is said that the estate, though impartible, was up to the year 1829 in a sense the joint property of the joint

(1) 10 All. 272, 15 I. A. 51.
(2) 9 Moore at p. 593.
(3) 4 Cal. 201.
(4) 5 I. A. 61.

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family of the three brothers. The sense is shown by the previous sentence to be the younger brothers "taking such rights and interests in respect of maintenance and possible rights of succession as belong to the junior members of a raj or other impartible estate descendible to a single heir." In Rajah Yanumula Venkayamah *v.* Rajah Yanumula Boochia Vankondora (1), which was quoted in the argument for the respondent for a passage in the judgment at page 339, where the estate is spoken of as being part of the common family property, though impartible, the question in the suit being in regard to the succession, their Lordships at page 340, after noticing evidence of the grants of portions of the estate, say :—"These grants by way of maintenance are in the ordinary course of what is done by a person in the enjoyment of a Raj or impartible estate in favour of the junior members of the family, who but for the impartibility of the estate would be co-parceners with him." This is a clear opinion that, though an impartible estate may be for some purposes spoken of as joint family property, the co-parcenary in it, which under the Mitakshara Law is created by birth, does not exist.

"And in Baboo Beer Pertab Sahee *v.* Maharaja Rajendra Pertab Sahee (2) the case

(1) 13 Moore 333. (2) 12 Moore 4.

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of the Zemindari of Hansapore in Behar, where the Mitakshara Law prevails, an impartible raj, which by family usage and custom descended according to the rule of primogeniture, subject to the burden of making Babuana allowances to the junior members of the family for maintenance, the question was whether the Raja had power to make a testamentary disposition of the Raj to one member of his family to the prejudice of his other male descendants and co-heirs, their Lordships held that the foundation of the supposed restriction on the power of the father to make a will was the community of interest which the members of the family acquired by birth, and said "cessante ratione legis cessat et ipsa lex."

"The reason for the restraint upon alienation under the law of the Mitakshara is inconsistent with the custom of impartibility and succession according to primogeniture. The inability of the father to make an alienation arises from the proprietary right of the sons. "Among unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation since the estate is in common." (Mitakshara, Ch. 1, S. 1, V. 30).

"The argument in support of the view of the High Court appears to be that although the sons do not take an interest by birth, so as to enable them to hold the estate or to have a

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partition, they have, as members of a joint family, some interest which is sufficient to enable them to prevent an alienation. The learned Judges of the High Court say : "it must be conceded that the complete rights of ordinary coparcenership in the other members of the family, to the extent of joint enjoyment and the capacity to demand partition, are merged in, or perhaps, to use a more correct term, subordinate to the title of the individual member to the encumbency of the estate, but the contingency of survivorship remains along with the right to maintenance in a suffiiciently substantial form to preserve for them a kind of dormant co-ownership."

"In the case on the 11th Bengal L. R. 397, it seems to have been considered that the son was a co-sharer with the father. It is said (p. 405) in the judgment : "It appears to me, then, on the facts with which we have to deal, that we must take the property which is the subject of suit to have been ancestral property, which descended with the joint family in the ordinary way, subject to the effect of an established custom in regard to its partibility among the existing joint members of the family, and in this view of the facts it is evident that the father had no power against his son, who was unquestionably joint with him as regards this property, to alienate or encumber the estate excepting upon a

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justification of a family necessity." Both Courts appear to have thought that, in order to prevent alienation by the father, there must be a co-ownership in the son or sons.

"The property in the paternal or ancestral estate acquired by birth under the Mitakshara Law is, in their Lordship's opinion, so connected with the right to a partition that it does not exist where there is no right to it. In the Hansapore case, there was a right to have Babuana allowance as there is in this case, but that was not thought to create a community of interest which would be a restraint on alienation. By the custom or usage the eldest son succeeds to the whole estate on the death of the father, as he would if the property were held in severalty. It is difficult to reconcile this mode of succession with the rights of a joint family, and to hold that there is a joint ownership, which is a restraint upon alienation. It is not so difficult where the holder of the estate has no son, and it is necessary to decide who is to succeed. In Bengal there is joint family property, but where the property is held by the father as its head, his issue have no legal claim upon him or property, except for their maintenance. He can dispose of it as he pleases and they cannot require a partition: Dayabhaga, Ch. 1. In the case of the Raja of Patkum in Chota Nagpore, which was admitted to be an impartible raj or

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in which the custom of primogeniture existed, it was held by the High Court of Calcutta (1) that it is necessary for the plaintiff to show that there was some custom which would prevent the operation of the general law, empowering alienation, and that proof of a custom that the estate descended to the eldest son to the exclusion of the other sons was not sufficient. On an appeal from this judgment this Committee was of opinion that it should be affirmed (2). In Narain Khootia *v.* Lokenath Khootia (3) it was held by the same High Court that the fact that the Raj of Chota Nagpore is impartible does not prevent the Maharaja for the time being from making grants of portions of it in perpetuity. And it is stated in the judgment that the family is governed by the Law of Mitakshara. It had previously been held by the same High Court in a case in 13 Bengal L. R. 445 where the plaintiff alleged that the descent of the estate was governed by Mitakshara Law, and that by the usage and custom of the family the estate was impartible and descendible according to the law of primogeniture on the male heirs of the original grantee, the estate was not in the case stated shown to be inalienable. Their Lordships think that this is the correct view." (4).

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(1) 5 Cal. 113.
(2) 8 I. A. 248.
(3) 7 Cal. 461.
(4) 10 All. 285.

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In the latest case on the question, Vencata Surya *v.* Court of Wards, (1) the same rule was affirmed and was stated in the following words: "The property in the paternal or ancestral estate acquired by birth under the Mitakshara Law is so connected with the right to partition that it does not exist where there is no right to it."

In impartible estates there can be no co-ownership.

We have seen before that the Privy Council in the Tippera case, held that the incidents of a joint family were inapplicable to an impartible estate. As Sir Richard Couch said in the case of Maharani Heera Nath Koer, that decision is in conflict with the other decisions of the Privy Council. Let us, therefore, consider the matter fully. It has been authoritatively held by the Privy Council in several decisions that the son has no right by birth in ancestral impartible property and that there is no joint ownership between the father and the son so as to give to the son the right to prevent an alienation by the father. Now if there is no co-ownership as between father and son in a Mitakshara family, there cannot be any co-ownership between two brothers in an ancestral impartible Raj. No difference can be made in this respect between a son and a brother. The right of survivorship is based on co-ownership. If the latter

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(1) 26 I. A. 83, 22 Mad. 383.

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does not exist, the former also fails. Survivorship and incapacity to alienate are both based upon one and the same principle by the commentators of the Mitakshara School—a principle which, though it is not based on the Smritis, has been accepted as a sound and binding principle of Hindu Law by the Courts. That principle is that all members of a joint family have proprietary rights over every portion of the property, which are incapable of definition before partition. Indeed, the decisions which declare the alienability of ancestral impartible property are quite inconsistent with the decisions which declare that an impartible estate can be a joint family property. But in many recent cases* on the point the Privy Council have again affirmed the rule of the law of the old decisions in which it has been held that a Raj may be a joint family estate in which succession is determined by the right of survivorship.

True Hindu Law on the subject.

According to true Hindu Law, as is laid down in the Mimansa, a Raj is not alienable. We have also seen that all Rajes belonged to certain families, the Kashis, the Panchalas, the Kurus, the Raghus and the like, and could never go out of them. The Salic law was applicable in India as among the Germanic nations, and is still applicable to the Rajpoot

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* Sreemati Rani Parbati *v.* Jagadish 29 I. A. 96.

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independent states, as is mentioned by Colonel Tod. The true rule therefore, is that a Raj is inalienable and always goes in the male line, unless a custom to the contrary is proved. But it does appear that in very ancient times the king sometimes divided his kingdom among his sons and sometimes set aside an incompetent elder son in favour of a younger son. You all know the story how Yayati gave the kingdom to a younger son Puru. In the case of Rama, the right of the father was admitted, but the selected younger brother would not take the Raj, because it was the Kulachar or the family custom (and not law) of the Ikshakus that the eldest brother always took. It is however admitted on all hands that the eldest leading a vicious life could and should be excluded as in the instance of Ansuman. In the Debi Bhagabata Purana however, it is laid down that the elder brother can be excluded only when he has become a *Patita* or outcaste.

However that may be, as the law now stands upon the decisions, a Raj may either be a joint family Raj carrying with it the right of survivorship or a separate Raj in which the widow or the daughter may succeed as under the ordinary rule of inheritance. We have also seen before that it is now well established that an impartible estate is alienable, unless a custom to the contrary is proved. The rule was established by the Privy Council in the case of

Upon the decisions rule of survivorship applies to joint family Raj and the ordinary rule of inheritance to separate Rajes and both are alienable until contrary proved.

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Udayaditya *v.* Jadub Lal (8 Cal.) and has since been affirmed in several cases.

Same rule established in Madras in 1889 setting aside earlier rulings.

In the Madras Presidency, till 1889, the decisions were against the power of the holder of an impartible estate to alienate. But the Privy Council in 1899, held that the rule in Udayaditya's case and Sartaj Kuary's case applied to Madras also. Their Lordships make the following observations in connection with the Madras decisions which are very instructive:

History of the law in Madras.

"The earliest reported case is a judgment of the Sudder Adawlut in the note, 3 Knapp, 89. The marginal note to it is: "A grant made by a Zemindar in 1804 of a part of his Zemindary which he held at that time under an eight years' lease, and which was afterwards confirmed to him upon the permanent settlement, is valid as against himself. Semble, such a grant would not be valid against his successors or against Government." The judgment is founded on S. 8 of Regulation XXV. of 1802. It says: "Sec. 8 provides for the payment of the public assessment on all separated portions of a Zemindary by a grantee if the transfer be regularly made, and, if otherwise by the grantor: and as a protection to the heirs the validity of the transfer is made to depend on its being conformable to the law of the parties and the regulations of the Government"; and by Sec. 12 Zemindars are declared absolutely incompetent without the previous consent of the

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Government to make any appropriations intended for the purpose of effecting a permanent reduction of the permanent assessment of their Zemindaries. It is then said by the Court: "The clear and obvious intent of the restriction in question, as well as of the corresponding legislative enactments, being to defeat improper alienations to the prejudice of the rights of the Government or of the successor to the estate, it follows by a common rule of construction that such alienations are voidable on the determination of the interest of the person who makes them." This is right if it applies only to alienations, which are not "conformable to the law of the parties or the regulations of the Government or not made with its consent.' If it goes beyond that, it is, in their Lordship's opinion, erroneous, and not justified by the sections referred to, the object of the Regulation being apparently, to keep the assessment permanent. There is no rule of construction which authorises it. The judgment was given in 1822. The next was in 1849. It is in the decisions of the Madras Sudder Adawlut in that year, p. 51. It was in a special appeal from the decision of the Civil Judge of Nellore, heard by one judge of the Sudder Court. The claim in the suit was for the recovery of an allowance under two grants originally made by the defendant's grandfather, and subsequently renewed by the succeeding inheritors. The

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Civil Judge had reversed the decision of the Munsiff in the plaintiff's favour, and the Sudder Court confirmed his decision, saying: "In a somewhat similar claim"—which appears from the note in the margin to be the case before noticed—"to the one under consideration, in which the same principle was involved, the Court of Sudder Adawlut decided that, as the obvious intent of the laws in force was to defeat improper alienations of land or the produce of land to the prejudice of the rights of the Government or of the successor to the estate, it follows by a common rule of construction that such alienations are voidable on the determination of the interest of the person who makes them." There is a similar decision in the Sudder Reports, Madras, in 1861. In 1892 the question came before the High Court of Madras in a special appeal. (1) The Court after considering Ss. 8 and 12, decided it in the same way saying that this construction of the Regulations was supported by the observations of the Court in the case No. 6 of 1821 (2), in giving judgment on the point for decision in that case, which was different from the present. There are two other cases in the same volume (3), in which the decision was followed, the whole appearing to rest upon the supposed rule of construction. The next case is in 2 Madras,

(1) 1 Mad. H. C. 141.
(2) 3 Knapp, 29.
(3) (1863), Mad. H. C. 349, 455

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H. C. R. 128. In that it was held by the High Court of Madras that the ratio decidendi of all the cases, down to the two latest, clearly was that a Zemindar upon the permanent settlement had really an estate analogous to an estate tail, as it originally stood upon the Statute De Donis. This was introducing into the law of the Madras Province what is said in Tagore *v.* Tagore (1) to be "a novel mode of inheritance, inconsistent with the Hindu Law." In the next case (2) it was held (Holloway J. dissentiente) that where a Zemindar alienated a part of the zemindary, and the terms of Regulation XXV. of 1802, S. 8, were not complied with, the alienation was invalid against his grandson. Holloway J. said, with reference to the decision of the Sudder Court that they professed to be based upon the decision of 1821 (1822?), and that the Court held the settlement to be in the Zemindar for his life, with remainder to his heirs and successors in perpetuity. "They held the words 'heirs and successors' as an English property lawyer would say to be words of purchase and not of limitation." The next case referred to by Mr. Mayne (3) was a case of self-acquired property, and has no application to the present. After this, the doctrine of the estate tail seems to

Construction of Madras Reg. 25 of 1802.

(1) (1872) L. R. Ind. Ap. Supp. Vol., p. 74.
(2) 3 Mad. H. C. 5.
(3) 4 Mad. H. C. 463.

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have been abandoned, for in the next case, decided in 1867 (1), the High Court held that it was clearly the law that the usage of succession to Zemindaries in the Presidency of Madras by a single heir by primogenitureship did not interfere with the general rules of succession further than to vest the possession and enjoyment of the corpus of the whole estate in a single member of the family, subject to the legal incidents attached to it as the heritage of an undivided family—that being all that the purpose of the usage, namely, the preservation of the estate as an impartible raj, renders necessary. The unity of the family right to the heritage is not dissevered any more than by the succession of coparceners to partible property, but the mode of its beneficial enjoyment is different. This was taking a very different ground from what was taken in the previous cases. According to it, the holder of the Zemindary has not a life estate in it, the Zemindary, though he is in sole possession of it, being by a kind of legal fiction the property of the family, and each member of it having a share in the property although he can do no act as proprietor. The next case is in 8 Mad. H. C. R. 157, where a similar opinion is stated. It is said (2) of the holder of an impartible estate, descending to a single heir who was a member of an undivided

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(1) 8 Mad. H. C. 177.

(2) Mad. H. C. 93.

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family, subject to the law of the Mitakshara, that the estate held by him, although subject to the peculiar incidents of such an estate, and possessed by him free from coparcenary rights in others, was not entirely at his disposal ; that "he should be regarded as possessing only the qualified powers of disposition of a member of a joint family with such further powers, or it may be with restrictions as spring from the peculiar character of his ownership, and that these powers fall short of a right of absolute alienation of the estate." It is to be noticed that here the estate is said to be possessed free from coparcenary rights in others. This is not consistent with the view in the former case, that the estate, whilst in the possession and enjoyment of one person, is still the property of the family in which each member of it has a share. There is a remarkable divergence of views in these judgments which their Lordships think deprives them of much authority. In the case of Beresford *v.* Ramasubba (1) the alienability of an impartible zemindary came again before the Madras High Court on appeal from the decision of a judge sitting on the Original Side. He had followed the decisions in 4 and 6 Mad. H. C. R., and made a decree declaring a mining lease by the owner of an impartible Zemindary void The two Judges of

(1) Ind. L. R. 13, Mad. 197.

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the appellate Division of the High Court held that they were bound by the decisions of this Committee in Rajah Udaya Aditya Deb *v.* Jadab Lal Aditya Deb (1) and Sartaj Kuari *v.* Deoraj Kuari (2); and remanded the case to try whether by family custom the Zemindary was inalienable for purposes other than those warranted by the Mitakshara law. This decision was in 1889. In the present case the High Court has said it is bound to act upon the doctrine laid down by the Judicial Committee, and refers to the distinction made by the Judicial Committee between a matter of succession by inheritance and a question of alienability. It is not necessary now to dwell upon this, as in the argument of this appeal an entirely new view of the question was taken. Mr. Mayne has said there was a custom co-extensive with the province of Madras with regard to every impartible Zemindary, that a course of decision had established a custom, supported by a long series of decisions resting upon the Mitakshara law. Their Lordships have felt a difficulty in appreciating this argument. It assumes that throughout the province of Madras the law laid down in those decisions, which, until they were reversed by the higher authority, were the law of Madras, was obeyed. The supposed custom followed the law. Their

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(1) (1881) L. R. 8 Ind. Ap. 248, (2) L. R. 15 Ind. Ap. 51.

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Lordships were referred to 14 Moore, Ind. Ap., p. 585, as shewing what was a valid custom. There it is said in the judgment with reference to long established usages existing in particular districts and families in India, that it is of the essence of special usages modifying the law of succession that they should be ancient and invariable. This custom now relied upon did not modify the law. It had no force independently of the law. There is no proof here of any custom or usage against alienation, which the Courts of India should recognise as having the force of law." (1)

Settled law that impartible property is alienable intervivos or by will until custom to the contrary is proved.

It is thus a settled rule of law in all the Presidencies that without a special custom to that effect an impartible estate is not inalienable and even gifts and testamentary dispositions by the holder are valid. (2)

By Act 2 of 1904 (Madras), impartible estates of the Madras Presidency have been made inalienable. They are alienable only for legal necessity as understood in the Hindu Law. Otherwise, the life-estate only will be bound for the debts of the proprietors. The proprietors however can provide for the succession in default of heirs and can make permanent grants of sites for public charitable and public religious institutions and grant leases for terms and under conditions specified in the Act (See p. 456a).

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(1) Vencata Surya *v.* Court of Wards, 26 I. A. 83.

(2) Vencata Surya *v.* Court of Wards, 26 I. A. 83.

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An impartible estate may be the separate property of the proprietor or joint family property, and under the Mitakshara, succession in the first case is governed by the ordinary rule of inheritance and in the second by the rule of survivorship.

Character of joint family estate considered.

The question what constitutes a joint family impartible estate is thus important and it is a difficult one. The holder of an impartible zemindary has not got merely a life-estate in it but has an absolute interest and it is by a kind of legal fiction that the property is the property of the family, the members of which "taking such rights and interests in respect of maintenance and possible rights of succession as belong to the junior members of a Raj or other impartible estate descendable to a single heir." The position is further made clear by their Lordships of the Privy Council, who say that the junior members are entitled to maintenance grants, but "these grants by way of maintenance are in the ordinary course of what is done by a person in the enjoyment of a Raj or impartible estate in favour of the junior members of the family who but for the impartibility of the estate would be co-parceners with him" in the estate which, though an impartible one, "may be for some purposes spoken as joint family property, but in which the co-parcenary which under the Mitakshara law is created by birth does not exist." Under the Mitakshara, there is right of survivorship only when there is right

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by birth. However, according to the decisions, a Mitakshara joint family impartible estate is one to which the holder for the time being is absolutely entitled, having rights of alienation, until a custom to the contrary is proved, the junior members having rights to maintenance and survivorship, as in an ordinary Mitakshara family and the female heirs being, as a consequence of it, excluded. Chief Justice Scotland (1 Mad. H. C. Reports 93) well described the position in these words : "Instead of the several members of the family holding the property in common, one takes it in its entirety and the common law rights of the others, who would be coparceners of partible property, are reduced to rights of survivorship to the possession of the whole, dependent upon the same contingency as the rights of survivorship of coparceners *inter se* to the undivided share of each and to provision for maintenance in lieu of coparcenary shares." (1)

The logical position to which one is driven by the above principles is that there can be no separation in a family holding impartible property. A Bench of three Judges of the Calcutta High Court recently held that

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(1) See Thakur Kapil Nath *v.* Government, 22 W. R. 17. Ramnundun Sing *v.* Janki Koer, 29 Cal. 836 P. C. Sartaj Kuari *v.* Deoraj Kuari, 10 All. 272, 15 I. A. 51 Vadreva Ranganayakamma *v.* Vadreva Bulle Ramaya 3 Mad. Ind. Jur. 521, Sivagnana Tevar. *v.* Periasami 1 Mad 312. Doorga Persad *v.* Doorga Konwari, 5 I. A. 61, 1 Mad. 312. Roop Sing *v.* Baisni, 4 Cal. 190, Chintamun *v.* Nowlukho, 1. Cal. 153.

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there could be not separation in such a case (1). But we have already seen that the Privy Council decisions about alienability have shaken the position that the members of the family of the holder of an impartible estate have coparcenary rights. In the most recent case on the question the Privy Council have apparently disapproved of the above case, which was cited before them, and have held, setting aside a judgment of the Calcutta High Court, that the members of the family can "have no coparcenary rights in the impartible estate" and there can be separation between them and the holder of the impartible estate (2). There was another early little known Privy Council decision which held that in a Mitakshara family there could be separation of the other members with the holder of the impartible estate (3) Since then the decisions all tended to the position that there could be no separation and that rule was boldly laid down by the Calcutta High Court in the very recent case mentioned above. The inconsistency of the position was pointed out in this book and it is satisfactory to find that the Privy Council have at last finally laid down the principle that there is no coparcenary right and there can be separation in the family

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(1) Laliteshwar Sing *v.* Rameshwar Sing 36 Cal. 481.

(2) Thakurani Tara Kumaree *v.* Chaturbhuj Narayan Sing 19 C. W. N. 1119.

(3) Vadreva Ranganayakamma *v.* Vadreva Bulle Ramaya 3 Madras Indian Jurist 521.

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of a person holding impartible property. But as there is no coparcenary right there can be no right by survivorship and the Privy Council seemed to be of opinion that the right of the junior members was a contingent interest under the custom of such estates, which could be defeated by alienation. The only consistent rule would be that laid down in the Tippera case, which has been discussed at p. 90, where it was held that survivorship can not obtain from its very nature in the case of an impartible estate. However that may be, the decisions of the Privy Council mentioned before establish that under the Mitakshara junior members can succeed by a right which was termed right by survivorship but which should be now more correctly defined as a contingent right by custom which excludes females, in cases, where no separation is proved (1) Now the question arises how can separation be proved in such a case ?

Proof separation.

When two brothers entered into an agreement by which the younger accepted a village for his maintenance in satisfaction of his claims, it was held there was no separation. (2)

In Madras in recent cases it has been held that junior members are to be considered as members of a joint family of which the senior

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(1) 29 I. A. 96, 9 Moore 559, 13 Moore 146, 10 Moore 53, 12 Moore 523.

(2) Sri Raja Viravara *v.* Sri Raja Viravara, 24 I. A. 119.

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is also a member (1) and the separate allotment of maintenance grants, separate holding of property and separate living would not be considered as operating a separation (2).

In the latest case before it however, the Madras High Court has greatly modified its former position and held that the son of a junior member (a brother) was not entitled to maintenance on the ground of his interest in the impartible estate, as he could have no interest as in an ordinary Mitakshara joint-family holding ancestral property, but could do so by custom only on the ground of his relationship with the holder of the estate (3).

In Calcutta, we have already noticed the contradictory judgments on the matter. In the latest case before it, (3) it was held that apart from any custom, the holder of an impartible property has complete dominion over it, subject to the right of maintenance of the other members, and on his death, it does not pass by survivorship but descends as if it were a separate estate, subject to the special rule that for purposes of succession the property is to be regarded as joint family property. The Court further held that notwithstanding the grant and receipt of Babooana grants, the

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(1) Therumal Rao Sahib *v.* Arai Rangasawmy 15 I. C 412, 23 Mad. L. J. 79, Kachi Yuva Rangappa *v.* Kulendree 23 I. C. 881.

(2) T. B. K. Viswanath Sawmi *v.* Kamu 21 I. C. 724.

(3) Laliteshwar Sing *v.* Rameshwar Sing 36 Cal. 481.

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contingent coparcenary interest may remain, and that such interest always remains, unless it is proved that at the time of the separation there was an intention on the part of the junior members to part with it. The propositions here laid down are contradictory to one another and inconsistencies will be difficult to avoid until the Courts go back to the simple position of the old Hindu Lawgivers described at pages 84-86, which is nothing more or less than that all principalities among Aryan nations were governed by what was denominated in more modern times as the Salic Law.

Rule of the Privy Council.

In the latest case on the question, the Privy Council have held that when the holder of an impartible estate executed a maintenance grant in favour of his younger brother in order to enable him to start a separate establishment and the latter built for himself a new house, established a new Thakurbari and a *Tulsi Pinda* and raised money by mortgage of the property thus leased to him and spent it on the marriage of members of his family and their maintenance, the brothers must be considered to have separated and succession to the impartible estate was governed by the law applicable to separate property and the widow succeeded in preference to the brother. The position of the latest Calcutta decision mentioned above was apparently disapproved and the law was down very clearly and definitely

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and many errors that had clustered round it have been dispersed. (1).

When should the holder of an impartible be considered separate from the junior members of the family.

When brothers live, like the Pandavas or Rama and his brothers, having nothing separate and enjoying the whole Raj with the eldest brother, who is obeyed by them as by his other subjects, but who nevertheless participate in the Raj practically on equal terms with the eldest brother, it would not be right to consider the brothers as divided. But when the brothers live apart from each other, the younger brothers having separate residences and separate maintenance grants, having separate worship and carrying on separate business, they should be considered as separate. It would be absurd to consider all the descendants of a remote ancestor always as members of a joint family. According to an ancient text of Devala, all descendants of a common ancestor should be considered as separate in the fourth generation. The rule of Devala has not yet been given effect to and considered as good law in principle, by our Courts but for all practical purposes it is good, as a contrary state of things is seldom found in these days. However that may be, separation which is the result of partition is not possible in principle in a family, which owns only impartible property, and even when it owns both partible and impartible property,

(1) Thakurani Tara Kumaree *v.* Chaturbhuj Narayan Singh 19 C. W. N. 1119.

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division of partible property, it has been held, does not constitute separation as regards the other property. But it has now been finally held that there may be separation as regards impartible property. How that separation is to be proved is difficult of apprehension. When there is a deed of separation or a deed by the junior brother relinquishing his rights as a member of the family and rights of residence in the family dwelling house and accepting maintenance grants descendible to children, there is certainly separation. When also several generations have lived in separate houses and in separate enjoyment of maintenance grants carrying on separate business, they should be considered as separate. But when the members are removed from one another by one or two degrees, when they live in the palace or *gur* or in houses provided by the Raj, when the expenses of marriage and other ceremonial expenses of the members of their family are borne by the holder of the estate, when the maintenance grant is not of a nature, which precludes the idea of jointness, when the worship is joint, *i.e.*, when the junior members do not set up separate images of gods which are periodically worshipped or worshipped as special gods of the family by Hindus, the family should be considered as not having separated.

It should be observed here that in case of ordinary families holding partible property

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New rule separation may be at the will of one member.

very recently the Privy Council have laid down that "a definite and unambiguous indication by one member to separate himself and enjoy his share in severalty may amount to separation. But to have that effect the intention must be unequivocal and clearly expressed" (1). The Calcutta High Court has laid down that "the intention to separate ought to be permanent and not temporary," and separate enjoyment of parcels is not conclusive proof of separation (2). The Madras, Lahore and Bombay Courts have also recently affirmed the rule laid down by the Privy Council mentioned above (3). In the above view it is now easy for the holder of an impartible property to declare himself separate from the junior members and in the case of a sonless proprietor, if he wishes that his widow or daughter or daughter's son should succeed he can by a formal declaration followed by suitable conduct affirming it, separate himself from the rest of the family and defeat their rights of survivorship. Again as an unequivocal intention to separate now is sufficient, little proof will be enough to prove separation when the junior members live separately.

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(1) Suraj Narain *v.* Iqbal Narain 40 I. A. 40 Budhmal *v.* Bhugwan 18 Cal. 302 P. C.

(2) Anund Kishore *v.* Bayi Thakurain 21 Cal. L. J. 296.

(3) T. V. Balakrishna *v.* V. Raju 16 Mad. L. T. 610, 27 I. C. 736, Segu Chidambaramaia *v.* Segu 12 I. C. 704, Munshi Ram *v.* Ganda Mal 26 I. C. 90 Murari *v.* Mukund 15 Bomb 201, Sham Lal *v.* Chhajpal 19 I. C. 51. Ganna Singh *v.* Bhagwati 3 I. C. 234.

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No presumption that large estates are impartible.

There is no presumption that an estate if very large, is impartible. The custom of impartibility has to be proved, in every case by the party alleging it. (1)

Consequences of confiscation and regrant.

Where an impartible Raj has been confiscated and regranted, the presumption is that it has been granted with all the incidents of the old Raj. (2) But the circumstances of the granting again may be such as are inconsistent with the continuance of the old character of the Raj. (3)

Incidents of estates created by Sanads.

The question of the incidents of estates created by Sanads or grants by Government under Reg. 25 of 1802 of Madras was recently raised in a case before the Privy Council in which the following principles were laid down :—(1) "The acceptance of a Sanad in common form under Regulation 25 does not, of itself, and apart from other circumstances avail to alter the succession to an hereditary estate (Kachi Kaliyana *v.* Kachi Yava, 32 I. A. 261) ; (2) unless there be an existing estate with other incidents which a Sanad in common form under Regulation 25 can operate to confirm, such Sanad will confer on or confirm in the grantee an estate descendible according to

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(1) Zemindar of Merangi *v.* Sri Raja, 18 I. A. 45. Srimantu *v.* Srimantu, 17 I. A. 134.

(2) Beer Pertab *v.* Maharaja Rajender, 12 Moore 1 (Hansapore or Bettia case). Mutta Vaduganatha *v.* Dora Sing, 8 I. A. 99.

(3) Miranji Zamindar *v.* Satracharla, 18 I. A. 45. Vencata Narasinha *v.* Narayya, 7 I. A. 38, 2 Mad. 128.

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the ordinary rules of inheritance of the Hindu Law (Raja Vencata Narasimha *v.* Raja Narayya 7 I. A. 38); (3) in order to establish that any estate is descendible otherwise than in accordance with the ordinary rules of inheritance of the Hindu Law, it must be proved either that it is from its nature impartible and descendible to a single heir or that it is so impartible and descendible by virtue of a special family custom (Babu Gonesh Dutt Sing *v.* Maharaja Moheshur Sing, 6 Moore 187); (4) the nature of the estate and the existence or otherwise of a special family custom are questions of fact to be determined on the evidence available in each case (Srimantu Raja Yarlagadda Mallekarjuna *v.* Srimantu Raja (17 I. A. 134)."

Where by a Government Sanad "the title of Raja Bahadur of Deur together with the lands attached to Deur" were granted to a descendant of the old Bhonsle King and the property was prior to the grant a Jagir and thus impartible and the Government regarded it as an appanage of the title of Raja Bahadur, it was held to be impartible and governed by the law of primogeniture. (1)

Consequences of devise and compromise.

When an impartible estate was devised to the widow by a holder of it, in absolute right and a compromise was entered into by her and the next heir that the widow should have only a life-interest, the compromise, it was held, did

(1) Raghojirao *v.* Lakshman, 30 I. A. 202, 36 Bomb. 639.

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not make it the self-acquired property of the latter and his widow could not succeed to it but the next of kin, who would otherwise take the impartible property, was entitled to succeed. (1)

Though originally the law of impartibility, was applied to estates on the ground of their being in the nature of principalities and the like, the custom is not an incident of the estate and is only valid as the custom of a family, and if the estate passes into the hands of a purchaser, it will lose its character of impartibility. (2) A Raj may be a partible one, if there is no family custom of impartibility (3), and an estate not a Raj may be impartible, if there is a clearly established family custom (4).

Impartibility is a family custom and not an incident of the property

A custom of primogeniture and impartibility, if discontinued for any length of time, will cease to be binding and the ordinary rules of Hindu Law will apply. The Privy Council have laid down that "it is of the essence of family usages that they should be certain, invariable and continuous and well-established; discontinuance must be held to destroy them." (5)

Impartibility may be discontinued.

As a consequence following from the legal position of the successor to an impartible estate taking by survivorship as a member of a joint

Whether succession certificate necessary.

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(1) Thakur Lekhraj Kunwari *v.* Thakur Harpal Sing, 39 I. A. 10, 34 All. 64.

(2) Gopal Das *v.* Narotum, 7 S. D. 198.

(3) Ghirdharee *v.* Koolahul, 6 W. R., P. C. 1.

(4) Thakur Nitrpal *v.* Thakur Jai Sing, 23 I. A. 147. See 16 Mad. 54, 5 Moore 169, 2 I. A. 263 (24 W. R. 255). Shamanund *v.* Ramakant, 32 Cal. 6.

(5) Raj Kissen *v.* Ramjoy, 1 Cal. 186.

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Mitakshara family, it has been held that a succession certificate need not be taken by him under Act 7 of 1899 in order to enable him to collect the debts due to the estate. (1) Having regard to the principles recently laid down by the Privy Council according to which a successor does not take by survivorship in its strict sense, the above position must be considered to be greatly shaken. The Madras High Court has held that a certificate is necessary, as the successor to an impartible estable estate does not take as a co-sharer by survivorship. (2)

How far successor bound to pay debts of a holder.

There is some difference of opinion regarding the liability of an ancestral impartible property, for the debts of a holder after his death, when it passes to his successor. In Allahabad and in Madras, it was held that in a joint family impartible property, succession is by survivorship and thus a holder is not the legal representative of his predecessor and the property in his hands is not assets for the debts of the latter (3). In Madras however, in recent cases it has been held that the earlier decisions must be considered as overruled and an impartible estate is liable to be sold in execution of a decree for the debts of the last holder, as it is to be considered as his separate property and as a

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(1) Guru Pershad Sing *v.* Dhori Rai 38 Cal. 182.

(2) Raja of Kalahasti *v.* Achegadu, 30 Mad. 454.

(3) Inder Sen Sing *v.* Harpal Sing, 34 All. 79. Nachiappa *v.* Chinnasami 29 Mad. 453, Raja of Kalahasti *v.* Achegadu, 30 Mad. 454, See 32 Mad. 439.

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son or other successor does not take by survivorship. (1) In a later case however, the same Court held that like other joint ancestral property, impartible property is liable for the unsecured debts of the last holder, if they were incurred for necessity or if the creditor made bonafidæ and reasonable enquiries by which he was satisfied that they were for a justifying propose. (2)

In Calcutta it was recently held that a son succeeding to an impartible estate does not do so as a co-sharer by right of survivorship and the estate in his hands is thus liable for the debts of the father irrespective of the nature of the debt. (3) In a latter case however, a contrary rule was laid down (4). Recent decisions of the Privy Council have however, laid down that there is no caparcenary interest by birth in ancestral impartible property and the successor does not strictly take by survivorship. In this view it would be reasonable to hold that the successor is a representative of the last holder and the impartible estates in his hands is liable for the unsecured debts of the latter, even when there is no justifying necessity for them as in the case of ordinary separate property, especially, as the estate is liable for secured debts without necessity.

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(1) Zamindar of Karvelnagar *v.* Trustees of Tirumalai, 32 Mad. 429.

(2) Maharaja of Bobbili *v.* Kaminayani, 35 Mad. 108.

(3) Ram Das Marwari *v.* Tekait Braja Bihary Singh, 6 C. W. N. 87.

(4) Kalikrishna Sircar *v.* Raghunath Deb, 31 Cal. 224, See 31 Cal. 227, 7 Mad. 255, 6 All. L. J. 753.

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Mortgages binding on successor.

Mortgages and other secured debts of a holder of impartible property, there can be no question now, are binding on the estate even after his death, as it is well-settled that he has full power to alienate the property, until a custom of inalienability is proved.

When the estate is inalienable, the successor and the estate can not be liable for any debts, except those for such legal necessity as would entitle the Karta of a joint family to alienate the family estate. But in case of such debts for legal necessity the successor and the estate are liable, notwithstanding any custom or any rule of the Puchees Sawal (in case of Orissa estates) restraining alienation. (1) Even when the debt is not for necessity, the life-estate of the holder is liable for it.

Holder has unlimited power of alienation intervivos or by will even against undivided members.

It is now settled that the power of disposal and alienation *inter-vivos* or by will, of the holder of an immoveable property, whether there is a joint-family or not, whether there has been separation or not, is unlimited, unless it is proved that there is a custom of inalienability. (2)

We have now to consider the question of the extent of the power of the holder of an impartible inalienable estate to make grants of land. He has certainly the power

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(1) Gopal Prosad Bhajut *v.* Raghunath Deb 32 Cal. 158.

(2) Avalappa Naicker *v.* Marugappa 36 Mad. 325, Vencata Surya *v.* The Court of Wards 26 I. A. 83, Laliteswar *v.* Rameswar 36 Cal. 481, See 8 I. C. 832, 18 Mad. 287, 8 I. A. 248.

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Powers of a holder of inalienable estate.

of granting leases for a term and also to give quarrying leases and to open new mines and cut down timber. Such power has been conceded to widows by the decisions of Courts (1) and a Raja has certainly more power than a widow. But he has not the power of granting mucurreris and of making permanent alienations.

Numerous copper plates bearing dates before and after the Christian era, show that kings and smaller chiefs made grants of land to gods, brahmins, bards, public officers, feudal lords, junior members of the family, sons-in-law and daughters. Grants for religious and charitable purposes, Debutter and Brahmotter and the like, were also allowable. But no one could so alienate property for any purpose whatsoever, as to weaken the kingdom or principality. Small grants made for necessary purposes and made *bonafide* such as might be made by a prudent owner were only allowable. From the time of the great king of the Ikshakus Dilipa(2) till the time of Harshavardan we read of a certain periodical ceremony by which kings gave away in charity all they possessed, except the entire kingdom, which was inalienable. Over moveables the chiefs had entire control but lands were alienable only within reasonable

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(1) Subbareddi *v.* Chenglauma, 22 Mad. 126.

(2) He performed the Visvajit Yajna. Jaimini refers to this Yajna in Mimansa Darsana 6 and 7-2 and says that the kingdom is not alienable.

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limits and for purposes allowed by the Smritis and custom. The Smritis allow grants to the daughter and the son-in-law, and to Brahmins and Gods. By custom, grants to junior members, (who had a right to maintenance according the Smritis), to public officers, to bards, to hereditary menial servants, and for the establishment and the maintenance of temples with their *paricharakas*, officiating priests and dancing girls were allowable. The Puranas and ancient copperplates establish the custom. Then again there was the custom of making grants for perpetual feeding of guests, Sanyasis and beggars, called Sadabrat. Such Sadabratas were established by specially charitable persons and were very often appurtenant to great religious establishments of Sanyasis. We have thus seen what according to Hindu Law and custom, was the nature and extent of the power of alienation of immoveable property by holders of impartible estates.

It must not be understood however, that the powers of a holder of an impartible estate are like those of a Kurnarvan of a Madras Tarwad or Illam. There every member is an owner. In an impartible estate, the only proprietor is the holder for the time being and his estate is descendible to one of his heirs as prescribed by law or custom, who takes as owner subject to liabilities mentioned above.

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The holder of an impartible estate has generally the right to resume service tenures on the death of the tenant and his successor in the Zamindary also has such right.

In case of alienable estates, accumulations as well as the corpus of the estate can be disposed of at the pleasure of the holder (1). This matter and the question of accretion are dealt with at pp. 294-299. **Accumulations.**

Section II.

Maintenance to junior members and maintenance grants and their incidents.

According to the Rishis, the eldest brother, when he succeeded to the entire estate, was under the obligation to maintain his younger brothers like a father. Rama and Janaka gave separate kingdoms to their nephews. In the more modern Rajput kingdoms, the younger brothers had to be given hereditary fiefs held on military tenure, which usually reverted to the Raj on failure of male issue. **Rule of maintenance in ancient Hindu Rajes.**

Let us proceed to the decisions of our Courts and principles laid down in them. It has been held that "under the general Hindu Law, the person in possession of an ancestral impartible property is bound to provide maintenance for the younger branches of the family, who can **Principles on which the right of maintenance is based.**

(1) Parvati *v* Jagadish, 20 Cal. 483 P. C. 29 I. A 82, Neelkristo *v.* Beer Chunder, 12 Moore 540, Maharaju Lungaru *v.* Virapratapa, 5 Mad. H C. 31, Luchmuna Row *v.* Perimul Row 4 Mad. Jur. 241.

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not claim partition" (1). In Madras it was held that the right to maintenance of junior members must be decided on the footing of the estate being joint and is based on the right to partition, if the estate could be partitioned.(2) But in the latest case on the question, it has been held that junior members' right is not based on dormant co-ownership but on relationship (3).

Who are entitled to maintenance.

Junior members of the family of a holder of an impartible estate are in the position of disqualified heirs of Hindu Law. They and their male descendants including adopted sons (4), even when they are farther removed than three degrees from the common ancestor (5), are entitled to suitable maintenance, when no hereditary grants have been made to their ancestors. A Hindu is not usually bound to support his grown up sons (5), but when the ancestral estate is impartible, a younger son has such a right. (6) Illegitimate sons of a deceased holder of an impartible estate, even

(1) Maharana Fateh Singji *v.* Kunwar Hari Sing 20 Bomb. 187 ; Mutusawmy *v.* Vencata Sawmy 12 Moore 203; Himmat Sing. *v.* Ganpat Sing 12 Bomb. H. C. 94.

(2) Abhinava Purna *v.* Arni 15 I. C. 412, 23 Mad. L. J. 79.

(3) Rama Row *v.* Raja of Pittapore 28 Mad. L. J. 634, 29 I. C. 356.

(4) Abhinava Purna Priya Vidaji Bhaskar Therumal *v.* Anni Rangadani 23 Mad. L. J. 79, 15 I. C. 417. See 5 B. L. R. 50, 9 W. R. 23, 5 Cal. 615, 8 Moore 126, 9 Cal. L. R. 379. (5) Ibid.

(5) Prem Chand *v.* Hoolas Chand 12 W. R. 494. See Ram Chandra, *v.* Sakharam 2 Bomb. 346 where the right of sons to maintenance even in impartible estates has been questioned.

(6) Maharana Fatehsingji *v.* Kunwar Hari Sing 20 Bomb. 183. Himmat Sing *v.* Ganpat Sing 12 Bomb. H. C. 94.

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of the twice-born caste, have been held entitled to maintenance from his successor. (1)

Expenses of marriage and other ceremonies of sons and daughters.

Junior members, when they have obtained no grants, are entitled to get from the estate the expenses of their sons' and daughters' marriages and of other *sanskaras* or ceremonies, which have to be performed for them according to the ordinances of the Smritis. (2)

Rights of widows and unmarried daughters of deceased junior members.

In cases where no hereditary grants had been made, widows and unmarried daughters of predeceased junior members have a right to receive maintenance, like widows and daughters of disqualified heirs, and the daughters are entitled also to receive money enough for their marriage and for suitable ornaments, as well as for necessary presents to their husbands at marriage. (3) Junior members and their widows have also a right of residence in the family dwelling house or to receive a suitable house instead, even against creditors.

It has been held that widows of junior members have an absolute right of maintenance from the holder of the impartible estate and they cannot be deprived of it by their husbands by an agreement with the said holder. (4)

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(1) Chuatarya Run Murdun Sing *v.* Sahib Purhulad Sing, 7 Moore 28, 53.

(2) Laksmipathi *v.* Kundaswami, 16 Mad. 54.

(3) Beerpertab *v.* Rajender Pertap, 12 Moore 4. Gauri *v.* Chundramma, 1 All. 262; Jogendra *v.* Fulkumary, 27 Cal. 77; Bai Devokri *v.* Sunmukram, 13 Bomb. 161; Mahalakshamma *v.* Vencata, 6 Mad. 83.

(4) Kachi Yuva Rangappa *v.* Kulandai Ayal, 23 I. C. 831.

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Maintenance whether a charge.

Junior members are in the position of disqualified heirs and in strict Hindu Law their maintenance is a charge on the family ancestral estate. Their position is better than that of mothers and wives, in whose case it has been held that their maintenance is a charge upon the family property against donees and alienees with notice, notwithstanding Sec. 52 of the Transfer of Property Act. (1)

Maintenance, however, has not yet been held to be a charge as against creditors, unless a charge for it is created by deed or decree. When the Court grants maintenance, it usually makes it a charge on the impartible estate. (2)

Sometimes the Courts have considered it equitable not to fetter the entire estate but to charge the maintenance on a portion of the estate (3).

As regards maintenance granted by a deed whether there is a charge or not depends upon the terms of the deed. A monthly allowance for maintenance secured by a deed to a junior member and his descendants has been held to be recoverable from the grantee, his heirs and even from donees from him, even though such a grant be not considered as a charge on the

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(1) Jogendra *v.* Fulkumary 27 Cal. 77 ; Purna *v.* Radhakissen 31 Cal. 478 ; Behary Lalji *v.* Bai Raj, 23 Bomb. 342 ; Ram Kunwar *v.* Ram Dai, 22 All. 326 ; Jogantir *v.* Villangama 12 Mad. L. J. 270.

(2) Chuotoria Run Murdan *v.* Saheb Purhlad, 7 Moore 28.

(3) Mahomed Hossein *v.* Mahomed Nehluddin, 13 Cal. L. R. 330 P. C.

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estate (1). When grant was to a person, to "his younger brothers and the rest of his family," in a suit by the son of the younger brother, it was held by the Privy Council that the payment was not limited to the life of the grantor and the brothers but their issue also were included and maintenance at a proportionate rate should be decreed as a charge on the estate. (2) A conditional grant for the maintenance of unborn persons is, however, ineffectual. (3).

A junior member, is entitled to such maintenance as would enable him to maintain the dignity of his family and to support himself and his children. It has been held that "while on the one hand the allowance to be fixed for the junior members is not to be such as to cripple the Raj, it must on the other hand be proportionate to the fair wants of a person in the position and rank in life" of such members. (4) According to the rule laid down in the Sukra Niti, the younger sons are entitled to get one-fourth of the kingdom by way of fiefs. (5) Maintenance to the extent of $\frac{1}{12}$th of the income and more have been granted by our courts. (6)

The rule of Sukra Niti that one-fourth of the estate should be granted.

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(1) Rajrajeswara *v.* Sundarapandiyasami, 27 Mad. L. J. 694, 27 I. C. 283.

(2) Lakshmi Narayana Ananga *v.* Durga Madhawa Deo, 6 Mad. 268, 20, I. A. 17.

(3) Chundee Charan Barru *v.* Siddeswara, 15 I. A. 159, 16 Cal. 71. (Bijne case.) (4) Mahesh Pertap *v.* Dirgopal, 21 All, 232.

(5) Sukra Niti, Ch. I., 347.

(6) 20 Bomb. 181 21 All. 232. 20 Bomb. 181. 42 Cal. 607.

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Decree for maintenance what should it contain.

When a decree for maintenance is passed, it should contain an order directing payment of future maintenance charged on the estate (1) and future maintenance can be realized by the execution of such decree. (2)

Maintenance grants in Kathiwar descendible to male heirs.

In Kattiwar among Girasia Rajputs, some of whom are converted Muhammadans retaining Hindu customs, there is a custom, by which younger sons are entitled to grants of villages for maintenance as *Jivai* or *Aida*, which continue in the family of the grantee, as long as there are male issue. They are divided among the male heirs. The widóws and daughters have no heritable rights, except probably in cases of subdivision, when they succeed to parts of the grant, there being male descendants of the grantee other than the deceased. It was held in a recent case that a widow in such a case, when the entire grant lapsed for failure of male issue, could not succèed and could not prevent the effect of its reverting to the holder of the Gadi by validly adopting after the death of her husband. It was also held that a mortgagee had no right to follow the property when it reverted to the Gadi (3).

It is clear that, on the analogy of females

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(1) Vishnu *v.* Manjamma, 9 Bomb. 108.

(2) Asutosh, *v.* Lukhimony, 19 Cal. 13. 9 F. B.; Sinthyee *v.* Thanakepudegur 4 Mad. H. C. 183. See 9 Bomb. 108.

(3) Agar Singji *v.* Bai Namba, 28 I. C. 529, 17 Bom. L. R. 273. Amar Singji, *v.* Depa Singji (1898) Unr. P. J. 60 at. p. 66 Hankey *v.* Martin (1883) 40 L. T. (N. S) 500, Beni Pershad *v.* Dudhnath, 27 Cal. 156, Maharana Fateh Singji *v.* Kunwar 20 Bomb. 183. See 26 I. A. 216, 4 C. W. N. 274.

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Savings absolute property

acquiring property out of the savings of maintenance (1), properties acquired by the holder of a maintenance grant out of its income are his absolute estate and can under no circumstance be resumed as accretion.

Maintenance grants held to be life-grants now on the analogy of Mahammadan and English grants.

Maintenance grants; and Jagirs without words of inheritance have been held to be only lifegrants. Here again a Muhammadan principle of law, that all Jagirs are for life and an English principle that maintenance grants are only life-grants have been grafted upon the Hindu Law, without a true appreciation of its principles.

But not grants for family.

It has been however, held in the case of a grant by Government for the maintenance of family that it is taken by his heirs and is impartible, if it has been granted for the maintenance of his rank but in all other cases, it is divisible among the heirs. (2)

Case law on the point.

Since 1816, it has been held that maintenance grants enure during the lifetime of the grantee and even of the grantor, even though they are made as to a 'proprietor' and 'forever' or when described as mucerreri istemrari, when there are no words of inheritance. (3)

Maintenance grants when life grants and when permanent.

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(1) Veeraraghava *v.* Kota Reddy 33 I. C. 532, 3 Mad. L. W. 422 Subramaniam *v.* Arunachelam 28 Mad. 1.

(2) Bodlerao *v* Nursing Rao, 6 Moore 426; Punchanandeyyam *v.* Nelkandyyan, 7 Mad 191.

(3) Collector of Baverlly *v.* William, Macnahgten Vol. II p. 188. Raja Rameswar *v.* Arjun, 28 I. A. 1. Dosibai *v.* Iswar, 15 Bom. 222 P. C. Tulsi *v.* Ramnarayan, 12 Cal. 117 P C. Anandlal *v.* Dheraj, 5 Moore 82. Agin Bindh Upadhya, *v.* Raja Mohan Bikram 30 Cal 29. Bhya Dirgajdeo *v.* Pandey Fateh Bahadoor Ram, 3 Cal. I. J. 521. Beni Prosad *v.* Dudnath 27 Cal. 156 P. C. Woodoyaditya Deb. *v.* Makoond Narainaditya Deb, 22 W. R. 225. Bir Chandra Manikya Bahadoor *v.* Ishan Chander Thakur, 3 C. L. R. 417.

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In a recent case, the Privy Council thus laid down the law: "Gifts or contracts expressed to be for maintenance, and indefinite as regards duration, may be shown by the acts of the parties or other circumstances to be intended to operate in perpetuity but *prima facie* they are limited to the life either of grantor or grantee." (1)

Maintenance grant without words of inheritance life grants.

Even when there are, no words of inheritance a grant may be conceived in such general terms as are quite capable of being construed as a heritable grant, and may be a grant to direct lineal descendants through males, and in some cases, in the order of primogeniture, according to the custom of the family. (2) Again "if it is proved by long uninterrupted usage that certain lands had passed from ancestor to heir *i.e.* from father to son for two or three generations without objection, the inference would be that the grant was a grant of inheritance, because the fact of descent from father to son is the strongest possible evidence of its hereditary character," the presumption in such cases being that the original grant was intended for the support of the collateral branches in perpetuity. (3)

Children of a collateral branch entitled to maintenance

The descendants of a junior member are entitled to maintenance (4) and the holder of

(1) Karim Nensey *v.* Heinrich 25 Bomb. 573.

(2) Bhaiya Ardawan Sing *v.* Raja Udey Partab Sing, 23 I. A. 64. See also Rameswar Sing *v.* Jibendra Sing, 32 Cal. 683.

(3) Koolodeep Narain Singh *v.* Government 14 Moore 247, 11 B. I. R. 71, Brojo Nath Bose *v.* Raja Sre Sré Darga 34 Cal. 753, Affd. 39 Cal. 695 P. C. Bhagwat Baksh *v.* Sheo 18 C. W. N. 297.

(4) 17 Bomb. L. R. 273, 28 I. C. 529.

CENTRAL LIBRARY

an impartible estate should not be allowed to resume a maintenance grant to a junior member on his death, when he leaves male children, without making provision for them and when there are widows and daughters, without making provision for them and without providing for the marriage expenses of the daughters. (1)

No resumption of maintenance grant should be allowed without providing for widow and children.

Ordinarily a Putrapautradi grant conveys an absolute alienable estate. But in Chotanagpore maintenance grants to junior members, which are ordinarily known as *Putrapautradika* Jagirs, by custom, descend to the male descendants of the grantee. They are impartible descending by the rule of primogeniture and are alienable but revert to the Raj on failure of male issue. (2) In a recent case however, the Patna High Court doubted the correctness of the rule that they were not absolute estates. (3) It has been held that in certain districts in Chotanagpore "both feudal and religious tenures escheat to the estate on failure of male heirs of the grantee," even though the grants be in terms *al aulad* or descendible to children both male and female (4) It was held in an old case that the use of the words *nussalun bad nussalun i.e.* generation after generation, would have the same effect in certain cases by custom(5).

Chotanagpore Putrapautradika grants.

Maintenance grants to a junior members

(1) Ekradeswar Singh *v.* Janeswari 42 Cal. 582 P. C. See 1 Pat. L. J. 106. (2) Ram Saran Lal *v.* Ram Narain Sing 42 Cal. 305.

(3) Lala Gajendra Nath Sahi *v.* Lal Mathura Nath Sahi 35 I. C. 382 1 Pat. L. J. 106.

(4) Perkash Lal *v.* Rameshwar 31 Cal. 561.

(5) Rup Nath Kunwar *v.* Jaggunath 1836 S. D. Sel. Rep. 158.

CENTRAL LIBRARY

Sometimes impartible.

of the family of the Chotanagpore Raj, or to relations as Birt Jagirs have been held by custom to be impartible, the eldest son becoming the Thakoor, the junior members being entitled to maintenance grants, and that on failure of male issue of any one of these junior members, the grant reverted to the Thakoor (1), and that the Maharaja could resume only on failure of male issue and even in that case, he was bound to give a maintenance to the widow (2).

Hikimali tenures.

In Chotanagpore in certain impartible estates the eldest son succeeds as Raja and the second son becomes Hikim and obtains a tenure called Hilkimali. Such a tenure continues in force only for the lifetime of the Raja and is taken up by the younger brother of the next Raja (3).

Grants in Palamow.

As regards superior Khorposh Jagirs in the Palamow District, the Government in their instruction for the settlement of Zemindari estate of Palamow, of October 25th 1827, said: "It seems to be agreed on all hands that the Jagirs are not alienable but lapse in default of heirs. A stipulation to that effect should be introduced in the new pattas." By the aforesaid settlement, known as Mr. Perry's Settlement, the jagirs revert to the Government on failure of male heirs. (4)

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(1) Jeetnath *v.* Lokenath 19 W. R. 239.

(2) Lal Gajendra Nath Sahi *v.* Mathura Nath Sahi 1 Pat. L. J. 109, 35 I. C. 383, 20 C. W N. 876. Thakur Kapil Nath Sahi *v.* Government 22 W. R. 17, 1 Cal. 142.

(3) Sri Sri Radha Madhub Narain *v.* Milan Mahato 21 I. C. 204.

(4) Munwar Subjeet Singh *v.* Agoree Gopal Narain, S. D. of 1851, p. 253. Hunter's Statistical Account of Bengal, Vol. 16, p. 395 See Reg. 17 of 1806.

CENTRAL LIBRARY

In a recent case, the above letter and the observations in Hunter's Gazetteer were considered of little value and on the evidence in the case about the incidents of a certain Jagir of Palamow it was held to be heritable and alienable and not liable to forfeiture. (1) The Jagir was apparently not one, which was a subject of the settlement mentioned above.

Putrapautradika grants not resumable from alienees when then there are male descendants.

It has been held that when there is Putrapoutradika grant, the grantor cannot resume from alienees, when there are male descendants. (2)

Maintenance grants of Durbhanga Raj.

In northern Behar in the Durbhanga or the Mithila Raj, maintenance grants are made to junior members. When they are made to male members they are termed *Babooana* and when they are made to wives of younger brothers they are termed *Sohag*. By custom both descriptions of grant are heritable but descend only to male heirs and females are excluded, though the grants may be in terms as *Putrapautradika*,(3) notwithstanding the fact that ordinarily *Putrapautradika* grants are descendible, as ordinary heritage, both to male and female heirs (4)

It was held that in the Durbhanga Raj a *Babuana* grant may be impartible in the sense that it descends to the eldest male

(1) Bhagwat *v.* Sheo 18 C. W. N. 297.
(2) Maharajkumar Jogat Mohini *v.* Brenda, 1 Cal. L. J. 557.
(3) Ekradeswar Singh *v.* Janeshwari Bahuasn 42 Cal. 582 P.C.
(4) Ram Lal Mukerji *v.* Secretary of State 7 Cal, 304 P. C.

CENTRAL LIBRARY

heir of the grantee to be held or managed by him for the maintenance of the family and the members can not have it divided among themselves and in all cases on failure of male issue, it reverts to the Raj but it is not inalienable (1). But in the later case of Ekradeswar mentioned above two brothers took the Babuana grant in equal shares by partition among themselves and it was found that Durbhanga Babooana grants descended not to one male heir only but to all the male heirs of the grantee in the male line. On the death of one of them, his widow succeeded to his partitioned share. It was held that as there was a failure of male issue notwithstanding the partition, the surviving brother took by custom in preference to the widow.

Putrapautra paramparyam grants of Madras

In Madras, it has been held that a maintenance grant *Putrapautra paramparyam* or descendible to heirs male is an absolute heritable grant and the condition as to reversion is bad as contravening the principle of the Tagore case (2). But as we have seen before, the Privy Council have held that such a condition may be good by custom. The Madras High Court has also held that in order to give to the custom of a particular estate the effect of overriding the terms of a contract,

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(1) Durgadut *v.* Rameshwar Singh 36 Cal. 943 P. C. See 35 Cal. 823.

(2) Vencata Kumaru *v.* Chellayyami 17 Mad. 150. See 22 W.R. 17

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it must be shown that the grantee had full notice of such custom (1). It must be said that it is difficult to see how the express terms of a contract may be considered as modified by custom. It should be remembered that it is now settled that impartible estates are alienable without a custom to the contrary, and it is quite competent for the holder of an impartible estate to make an absolute heritable grant to any body and thus to junior members also. It should also be remembered that the Privy Council have laid down the rule that where a jagir is created by a document, its alienability and its liability to forfeiture must depend on the terms of the particular grant (2). When there is no document and where the terms of the document are such as not to exclude the effect of a custom, the grant may be considered as one in accordance with the prevailing custom of the family.

Grants by document governed by its terms.

In Orissa, grants of villages as maintenance made by the holder of an impartible estate to junior members known as *Baradarm jagir khorposh nishkar* are heritable but are not transferable and are resumable on failure of direct male issue (3). If there is a quit rent attached to the

Maintenance grants in Orissa.

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(1) Mana Vicrama *v.* Rama Patter 20 Mad. 275.

(2) Dosebai *v.* Iswar Das 15 Bomb. 222 P. C., Bhaghwat Buksh *v.* Sheo Pershad 18 C. W. N. 297. 21 I. C. 481.

(3) Dwarka Nath Bidyadhar *v.* Dambaradhar Mahapatra 38 Cal. 278.

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grant, the grantee is a tenant and is not to be considered as a co-proprietor (1).

Maintenance grants in ancient times impartible and inalienable.

Maintenance grants in ancient times were on military tenure, hereditary and impartible governed by the law of primogeniture, like the feudal tenures of Europe. The tenures passed to the eldest son of the grantee, who was under the obligation to make similar grants to his younger brothers. They were also inalienable. Such a custom obtains still in certain estates (2).

Hereditary maintenance grants have incidents of joint-family partible ancestral property.

As a rule however hereditary maintenance grants descendible to male heirs are now considered to be capable of partition and alienable like joint ancestral family as under the Mitakshara Law where the famiły is governed by that law or under the Dayabhaga where the family is governed by that law.

Under the Mitakshara law it has been held that the sons of a grantee have the right to partition a maintenance grant as ordinary ancestral property and all the incidents of ancestral joint property apply to it (3).

Grant in lieu of specific sum, separate property.

It has however, been held that when a grant of land is made in discharge of a decree for a specific sum of money claimed as maintenance, the property so granted is to be considered

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(1) 38 Cal. 278.

(2) Bhaiya Ardawan Sing *v.* Raj Udey, 23 I. A. 73.

(3) Ramchandra Marwari *v.* Mudeshwar, 33 Cal. 1158, Laliteswar Sing *v.* Bhabeswar, 35 Cal. 823.

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as the absolute self-acquired property of the grantee (1).

It was at one time thought that Babooana and other maintenance grants, which are heritable or descendible only to male heirs were absolutely inalienable, except for legal necessity, because such a grant was intended to enure for the benefit not only of a junior member of the family but also of his male descendants in the direct line and thus did not lose its ancestral character by the grant and did not become self-acquired property in the hands of the grantee, who had only a life estate. This position must now be considered as greatly modified by the recent Privy Council ruling in Durga Dutt Sing's case, which has been followed in several cases since and which must be considered to have settled the law. It was laid down in that case that maintenance grants, even when they are impartible, are not inalienable, unless a custom to that effect is proved, and the holder is in the position of a manager of a Mitakshara joint family as regards alienations. If he is the father he "may sell or mortgage not only his own share but his sons' shares in family property in order to satisfy an antecedent debt, not being of an illegal or immoral character. Sales, mortgages for debts for necessity or for antecedent debts

Maintenance grants how far liable for debts of a holder.

(1) Raja Narsing Deb *v.* Ray Kaylash Nath, 9 Moore, 35.

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and sales in execution of antecedent debts though unsecured, will pass not only the interest of the father but also that of the sons" (1).

Creditor of son can his share.

It has even been held that the creditor of a son during the life-time of the father can attach the share of the son and sell it in execution, as in the case of ordinary joint-family ancestral property under the Mitakshara (2).

Grantee has no mineral rights.

It has been held that ordinarily in maintenance grants the mineral and all under-ground rights remain with the grantor, unless he expressly parts with it. The grantee can work old mines but cannot open new mines (3).

Maintenance grants void after death of grantor.

It has been held by the Privy Council that a maintenance grant is "*primafacie* resumable on the death of the grantor" and when the holder of a maintenance grant executed a muccurrery lease in favour of a third person and the grantor and his successor continued to receive rent from the latter, after the death of the grantee, the fact was not a recognition of the permanence of his tenure, which became void on the death either of the grantor or the grantee,

Acceptance of rent is not recognition of the permanency of a lease by a grantee.

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(1) Durgadut *v.* Rameswar Singh, 36 Cal. 943 P. C. Laliteswar *v.* Bhabeswar, 35 Cal. 823 Ramchandra Marwari *v.* Mudeshwar, 33 Cal. 1158, Rameswar Singh *v.* Jibendra Singh, 32 Cal. 683, Bhabeshwar *v.* Rai Babu Ganga Pershad 12 C. W. N. 966, Hazarimal *v.* Abani, 17 Cal. L. J. 38.

(2) Ramchandra Marwari *v.* Mudeshwar, 33 Cal. 1158.

(3) Prince Mahomed Buktyar Shah *v.* Rani Dhojamoni, 2 Cal. L. J. 20, Kumar Hari Narayun *v.* Sriram, 14 C. W. N. 746 P. C. Durga Prasad *v.* Brajo Nath, 39 Cal. 696 P. C.

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and if he was allowed to remain as tenant, he must be considered as a tenant at will. (1)

Notice by a life grantee that his grant is permanent would not make his possession adverse.

It was also held in that case that "a mere notice by a person holding for his life that he claimed to be holding on a perpetual or hereditary tenure would not make his possession adverse within the meaning of the Limitation Act, so as to bar a suit for possession on the expiration of the life-tenancy."

How far assertion of superior status creates adverse title.

In an earlier case, in the case of a Ghatwali, it was held that the possession of a tenure created by a Ghatwal was not adverse as against his successor until some definition or assertion of adverse right had been made (2). In recent cases, it has been laid down that a claim to hold a tenure as a permanent heritable and transferable tenure if made before 12 years and possession under such claim, if sufficient in publicity and extent for that period, may create a title by adverse possession (3). It is however, difficult to see how a tenant merely by setting up a claim of superior status can force his landlord to go to Court for a mere declaration that such a claim is unfounded, as otherwise a tenant's unfounded claim would become real and unassailable by

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(1) Beni Pershad Koeri *v.* Dudhnath, 27 Cal 156 P. C.

(2) Tekait Ram Chandra *v.* Srimati Madhokumari, 21 I. A. 188.

(3) Bhagwat *v.* Sheo, 18 C. W. N. 297, Thakore Fatesingji *v.* Bamanji, 27 Bom. 515, Shesamma Shettai *v.* Chikaya, 25 Mad. 507, Parameswaram *v.* Krishnan, 26 Mad. 535, Ishan *v.* Raja Ramranjan, 2 Cal. L. J. 125.

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the expiration of 12 years. The rule does not seem to be consistent with the decision of the Privy Council in Beni Pershad Koeri's case mentioned above.

Section III.

Military and feudal tenures.

Orissa chiefs.

The most important of the ancient feudal aristocracy of India are the Orissa Rajas, the Tekaits of Chotanagpore and the Polygars of Madras. Under the great conquering Kesari, Gungabunsi and Gajapati kings of Kalinga and Orissa, there arose some military chiefs, who held their estates on condition of military service and had the status of the old Samanta Rajas. The sway of the Kalinga Kings often extended up to Rameswaram. There is a similarity between the Orissa Rajas and the Madras Polygars, which can thus be easily explained. The Orissa Rajas even now acknowledge a nominal allegiance to the Chiefs of Puri or Khurda, who claim their descent from the old Kings of Orissa.

Among them there are some who were originally officers of police, headmen of villages or public servants of other descriptions and their history and evolution to power and dignity are similar to those of the Polygars of Madras described below.

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I have already described these impartible estates of Orissa and the legislation concerning them. They are divided into two classes the Gurhjat and the Killajat Rajas. "Their customs are recorded in what is called the Pachees Sawal which is a record embodying the answers given by the chiefs of the sixteen Tributary Mehals in the Zillah Cuttack and of certain Killas in the province of Orissa to questions put by the Superintendent in 1814. After that statement had been drawn up, Regulation XI. of 1816 was enacted, which provided that the estates of those sixteen Tributary Mehals should descend entire to the person having the more substantial claim according to local and family usage." (1) The Gurhjat are in the Non-Regulation Mehals and the Killahjat are in the Regulation Mehals. Their customs are slightly at variance with each other. The Pucchees Sawal will be given to you at length in the lecture on inheritance. It should, however, be stated here that it has been invariably acted on since 1823. (2)

Tekaits of Chotanagpur.

There are a class of holders of impartible estates in Chotanagpore and Behar called

(1) Nittanund Murdiraj *v.* Sreekurun Juggernath, 3 W. R. 116.

(2) Raja Sham Soondur Mohendar *v.* Kishen Chunder Bewarlah Rai, 4 Select Report 39. Raja Jenarden Ummur *v.* Okhoy Sing, 1835, 6 Select Report, p. 42. (Dhekannal). Bunkey case, 6 Select Report, p. 296, Parikood case, Hurrishpore case. Prandhur Roy *v.* Ram Chunder Magraj, 1 Sudder Report 1861, p. 16. Attgarh case. Nittanund Murdiraj. *v.* Sreekurun Juggernath.

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Tekaits whose estates are called Gadis. Popularly it is supposed there were eighty four Gadis. There were some more important chiefs among them, who called themselves Rajas, Maharajas and Maharajadhirajes. They were popularly known as Rajas of Sheo, Shekhar &c. The Raja of Palgunj, the Maharajas of Deo, Chotanagpore and the Maharajadhirajas of Ramgurh and Pachet were among the more important of these chiefs. Many of them were probably aboriginal chiefs of this part of the country, known as Jharkhand or the forest tract, from the most ancient times. They kept up a sort of independence up to very recent times. Under them were certains Tekaits or holders of estates on military or other service tenure. They originally owed a sort of nominal allegiance to one or the other of the Rajas or Maharajas mentioned above and had to receive their Tika or mark of sovereignty (rather service) from the right toe of their feudal lord. But this nominal allegiance vanished away in time during the British Raj as in the case of the Rajas and Polliams of Orissa and Madras. Now they are practically independent impartible estates governed by the customs of what are called the eighty four Gadis. They are all impartible but alienable.

Polliams of Madras.

The peculiar tenure called Polliam or Palayam is thus described in the Fifth Report on the affairs of the East India Company in 1812, pp. 117, 150, 130-1 :—

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"It is a species of tenure which in olden times was held by petty chieftains for services rendered to the state, and although the Polligars acknowledged the State as paramount, yet, they were, in fact, almost independent."

It is also there stated that the Carnatic Poligars "were originally no more than officers of police to whom was committed the protection of a given portion of Country; headmen of villages or public servants of other descriptions, whose actual condition had become changed to that of military rulers during those revolutions of power in the Deccan which had every where contributed to the usurpation of authority and in no part more than in the Southern division of the Peninsula." (1)

The Privy Council adopted the description of these tenures as given in Wilson's Glossary. They say "A Polliam is explained in Wilson's Glossary to be "A tract of country subject to a petty chieftain." In speaking of Polligars, he describes them "as having been originally petty chieftains occupying usually tracts of hill or forest, subject to pay tribute and service to the paramount State, but seldom paying either, and more or less independent; but as having at present, since the subjugation of the country by the East India Company, subsided into peaceable landholders."

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(1) Kachi Kaliyana *v.* Kachi Yuva 27 Mad. 508 P. C. The Udayar Palayan case.

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"A Polliam is in the nature of a Raj. It may belong to an undivided family, but it is not the subject of partition; it can be held by only one member of the family at a time, who is styled the Polligar, the other members of the family being entitled to a maintenance or allowance out of the estate." (1) The ordinary incidents of impartible Rajes apply to the tenure.

Such a tenure is recognised by Madras Regulation 4 of 1831.

Dayadi Pattam of Madras.

A Dayadi Pattam in Madras is an estate belonging to a family, impartible and inalienable, in which the senior in age of the Dayadis becomes the Polygar whose position is not merely that of the manager for the family but who has no right to make a sale or a gift. (2)

It has been held that females are not precluded by any rule of descent, custom or usage of Cumbala Tother caste from succeeding to a Polliam (3).

Section IV.

Jagirs, Vatans, Saranjams, Inams and other service tenures.

Under the ancient Hindu kings, it was customary to make grants of villages to

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(1) Nargunty Lutchmeedasamah *v.* Vinguma Naidoo 9 Moore 86.
(2) Swabramania Naicker *v.* Krishnammal, 18 Mad. 287.
(3) The Collector of Madura *v.* Veeracamoo 9 Moore 446.

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The system in ancient times.

favoured persons, especially Brahmans. These were known as Shashanas. There were also officers of the State, who were usually hereditary, who had grants of lands attached to their offices. All the village officers, such as accountants, collectors &c., who are now known as Patwaris, Karnums, Prodhans and the like had lands attached to their offices. Similarly every village had its artisans, blacksmiths, carpenters, palanquin bearers, barbers and washermen, as well as priests, villagewatchmen, drummers and peons who had lands attached to their offices. The village officers were under the Prodhan or Patel *i.e.* the headman of the village—the Gramadhipati of the old Smritis. Over several villages was the Desai, Deshpande, Deshmukh or the Desadhipati, who was the chief revenue officer of a District. There were also lands assigned to military officers and men. The local militia, like the khandaits or swordsmen of Orissa, had lands assigned to them. The military chiefs originally were all of the Kshatriya caste, the Rajanya or the royal fighting caste of emigrants Aryans. But in course of time, the Kshatriyas became all but extinct by constant wars among themselves and also with the continuous streams of invaders that poured into India from ancient times up to the eighteenth century. The old system had to be modified and a fighting force of inferior caste had to be maintained by grants of land. The

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great kings also had large standing armies whose salaries were paid in cash, as the Chinese and Greek travellers tell us. But the bulk of the army consisted of the local militia, who had grants of land. All these service grants were hereditary and the management devolved on the eldest son of the grantee by the rule of primogeniture, who had an extra share for the performance of the office in the manner that was customary. The other members of the family participated in the profits. But as a rule they all kept together, though the different branches sometimes partitioned the lands, keeping an extra share for the head of the family, who represented them in regard to the office. This is the meaning of Manu's rule that the eldest represent the family in matters of State. All these officers could be dismissed and their lands resumed at the pleasure of the king and of the officers superior to them, though the occasion for it seldom arose.

The old state of things could not be continued under the new conquerors, who came in from time to time. The Muhammadan kings found they were only entitled to the kheraj or revenue of the villages. They could thus only assign the revenue as Jagir. The kings of the modern Hindu principalities had also to follow that system. The Muhammadan Jagirs were only personal grants. They became hereditary by force of local custom. The Jagirdars thus

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became very powerful and often rebelled and thus the Muhammadan kings enforced the rule that all Jagirs were life-grants. In Northern India, the Jagirdars became in course of time extinct or became Zamindars or collectors of revenue. Most of the officers had to be paid their salaries in cash. In the Deccan however, the old system with modifications continued, because it was divided into many independent principalities, Hindu and Muhammadan, which had to maintain their position with difficulty with the aid of local militia. There all the offices had lands attached to their offices. But it was the village officers and artisans who had lands attached to their officers, as in ancient times. The higher officials, who were newly created, could only get assignments, of the revenue. The distinction has been lost sight of, because the history about these offices is little known.

Jagir, Saranjam, Inam.

Now we find that ordinarily Sanadigrants in *inam*, *saranjam*, *jagir*, *wazif*, *devasthnan* and *sevasthan* in the Bombay Presidency are "more properly described as alienations of the royal share in the produce of land *i.e.*, land, revenue, than grants of land though in popular parlance so called"(1). Inam grants should be presumed both by revenue and civil courts to be grants of revenue and not of the land, until the

(1) Per Westropp, C. J., 4 Bom. H. C., A. C. J. 1.

CENTRAL LIBRARY

contrary is proved (1). But the grant may be made in terms as to convey the proprietory right in the soil (2) *e.g.*, when the grant conveys right to "water the trees, the stones, the mines and the hidden treasures therein but excluding the hakdars and inamdars." Again *saranjam* as well as *jagirs* may be of a personal nature, *Zat saranjam*, or for the maintenance of troops, *fouz saranjam* (3).

Ordinarily grants of revenue but may convey proprietory rights to the soil.

Colonel Etheridge in his Preface to the list of Saranjams published in 1874, makes the following observations about the character of these tenures:

Colonel Etheridge's description of Saranjams and Jagirs.

"It was the practice under former governments, both Mahomedan and Mahratta, to maintain a species of feudal aristocracy for state purposes by temporary assignments of revenue, either for the support of troops, for personal service, the maintenance of official dignity, or other specific reason. Holders of such grants were entrusted at the same time with the powers requisite to enable them to collect and appropriate the revenue and to administer the general government of the tract of land which produced it. Under the Mahomedan dynasty all such holdings were known as *jagirs* and under the Mahratta rule as *saran-*

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(1) Govind Reddi *v.* Ravi 29 I. C. 1003 Yeddasnapadi *v.* R. Palli 24 Mad L. J. 288, 19 I. C. 440.

(2) Raoji Narayun *v.* Dadaji, Bajujree, 1 Bom. 523.

(3) Steele's Hindu Castes, p. 207.

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jam. If any original distinctive feature marked the tenure of *jagir* and *saranjam*, it ceased to exist during the Mahratta Empire: for at the period of the introduction of the British Government there was no practical difference between a jagirdar and a saranjamdar either in the Deccan or Southern Mahratta country. The terms *jagir* and *saranjam* are convertible terms. These holdings being of a political character were not transferable, nor necessarily hereditary, but, as a rule, were held at the pleasure of the Sovereign. On succession a nazrana was levied."

Again in the Fifth Report of the Select Committee on Indian Affairs (p. 86) we find the following: "With regard to jagirs granted by Mahomedans either as marks of favour or as rewards for public service, they generally, if not always, reverted to the State on the decease of the grantee, unless continued to his heir under a new sanad; for the alienation in perpetuity of the rights of Government in the soil was inconsistent with the established policy of the Mahomedans, from which they deviated only in the case of endowments to the religious establishments and offices of public duty, and in some rare instances of grants to holy men and celebrated scholars."

On the assumption by the East India Company of the Carnatic, by an order of the Governor of Madras dated 5th of August, 1801,

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a list of all jagirs was prepared and other sunnads examined and all jagirs, not being Altamgha, were declared to be "held by tenures dependent on the pleasure of the governing power." The Privy Council in the case of East India Company *v.* Syed Ally (7 Moore 553) supported the view of the government that these grants were merely grants of portions of public land revenue and conveyed no proprietory interest.

As we have seen above the generic name for grants for service or in consideration of past services was Jagir according to Mahammadans and its Mahratta equivalent was Saranjam. Again Saranjam and Inam are not exclusive of one another, Inam being the generic term. (1) The term Jagir is described in Harrington's Analysis (vol. 3 p. 405) on the authority of a Minute by Sir John Shore dated the 2nd April 1788. Jagirs are of two kinds, one conditional on future service and another unconditional *i.e.* where the grant is for services already rendered.(2) A grant conditional on service may again be two kinds ; one subject to a burden of service and not merely in lieu of wages, and the other a grant merely in lieu of wages. (3) Another distinction has also been made between a grant for services of a public nature and one for

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(1) Raghojir Rao Saheb *v.* Lakshman, 36 Bom. 639 P. C.
(2) Dosibai *v.* Iswardas, 9 Bom. 561 P. C.
(3) Vencata Narasimha *v.* Sobhanadari, 29 Mad. 52 P. C.

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services private or personal. (1) The latter again may be one granted before the Permanent Settlement and one granted after. (2) All these distinctions are necessary to remember as they have been held to be elements which determine the status of á Jagir or service tenure in regard to the question whether it resumable or not.

Saranjams impartible eldest son being manager but others entitled to shares of profits.

It has been held that a Saranjam is ordinarily impartible and descends entire to the eldest representative of the last holder but such representative is entitled only to the sole management of the tenure, subject to the rights of the other members to receive their respective shares in the profits of the village and is like a trustee from whom the other members can demand an account. (3)

It has been held that a Saranjam given for the support of a distinguished family is generally in its nature impartible and inalienable, apart from any connection with public service. (4)

Vatans.

Vatans in Bombay are hereditary service tenures granted by the previous rulers of the country to village and district officers. They are ordinarily inalienable. The incidents of

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(1) Radha Prosad Singh *v.* Budha Doshad, 22 Cal. 938 P. C.

(2) Vadiasapu *v.* Vyricherla, 12 I. C. 487 P. C.

(3) Narayan Jagannath Dikhit *v.* Vasudeo Vishnu Dikshit, 15 Bom. 247.

(4) Ram Chandra Vakharam *v.* Sakharam Gopal, 2 Bom. 346.

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such tenures are governed as a rule by Bombay Acts 2 and 7 of 1863, 3 of 1874 and 5 of 1886.

Nature of the estate of a Vatandar before 1827.

It will be convenient to consider what was the nature of the estate of a holder of a Vatan appendant to an hereditary office before the subject engaged the attention of the Indian Legislature in 1827. The question is discussed by Westropp, C. J., in Krishnarav Ganes *v.* Rangrao (1), and the conclusion arrived at by the learned Chief Justice, on the authority of Mountstuart Elphinstone's Report on the territories conquered from the Peshwa and the decisions of the Sadar Adalat is that both as to civil hereditary offices and the Vatans annexed to them, the balance of authority inclines in favour of the alienability in permanence as well of the offices as of the Vatans appendant to them, together or separately, but that "in the case of some, although not of all, such offices, the assent of the native Government seems to have necessary to the validity of the alienation and also if the Vatans were undivided, the assent of the coparceners, if any." Chief Justice Sargent in 1885, in the case of Radhabai *v.* Anantrav Deshpande (2), says: "Having regard to the purpose for which they were granted, the actual incumbent of a service Vatan previous to English legislation was regarded as fully

(1) 4 Bom. H. C. A. C. J. p. 12. (2) 9 Bom. 198 F. B.

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

representing the Vatan. As one of the Court who decided the case in Kuria *v.* Gururav (1), I may state that this important conclusion was not brought to our notice, or present to our minds."

English legislation about Vatan.

"Passing to English legislation on the subject, which commences with Regulation XVI of 1827, we find Section 20 of that Regulation declaring that the allowance derived by an hereditary officer shall in future be considered strictly as official remuneration and forbidding its alienation out of the family, a prohibition which was restricted by the interpretations put on the section by the Sadar Adalat to an alienation exceeding the life-time of the incumbent or co-sharer. The next Act (Act XI of 1843) regulates the service of hereditary officers in this Presidency, and provides for the assignment, by the Collector, of a portion of the rents and profits of the Vatan for the maintenance of the officiating hereditary officer leaving the surplus to be participated in by the other sharers in the Vatan. After some diversity of opinion in the Sadar Adalat, it was held, that Section 20 of Regulation XVI of 1827 was not affected by this Act, and that no part of the Vatan whether assigned by the Collector or constituting the surplus participated in by the co-sharers, could be alienated.

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(1) 9 Bom. H. C. 282.

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This Act, as well as Section 20 of Regulation XVI of 1827, was repealed by the Bombay Hereditary Offices Act (III of 1874). But by Sections 5 and 7 of that Act the alienation of any Vatan, or part thereof, is forbidden, without the sanction of Government, to any person not a Vatandar of the same Vatan and also of the Vatan property assigned by the Collector under Section 23 of the Act as remuneration of the officiating Vatandar to any person without such sanction, and, lastly, by Sections 10 and 11 power is given to the Collector to set aside any sale or transfer there-of and to declare the same to be null and void, and to summarily resume possession."

The Full Bench settled the legal position of a Vatandar. It held that it is not quite correct to say that land belonging a service Vatan "was held on a tenure of successive life-estates, the right to which accrued on the death of each tenant" as was assumed in an earlier case (1), but was more like that of a Hindu widow, who represents fully the estate subject to her inability to alienate except for special purposes, and an alienation by a Vatandar who was restrained by law from doing so, was not effectual beyond his lifetime. It was therefore held a Vatandar for the time being fully represented the Vatan. "The restriction of his

(1) Kuria *v.* Gururao, 9 Bomb. H. C. Rep. 282.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

power of alienation outside the family without the sanction of the Government could not be held that sufficient to change that character or to prevent his representing the Vatan in all questions with the outside world relating to it as fully as he had done before the English Laws. It was therefore held :

(1) That adverse possession for twelve years during the lifetime of one holder is a bar as against succeeding holders ;

(2) That a judgment against one is *res judicata* as regards a succeeding holder.

Do Vatans lands become alienable when services are abolished.

One of the questions referred to the Full Bench in the above case was, whether lands become alienable when the services are abolished. The law on the subject is thus summarised by West J. in the following words :—

" I am of opinion that the third question proposed to the Full Bench does not admit of a single invariable answer. So long as lands are assigned by the Sovereign to the support of a public office, or the land tax payable on lands is remitted in consideration of services to be performed by a particular family or line of holders, the lands are, according to the principles of the Hindu Law and the customary law of the country, incapable of an alienation or disposal, such as to divert them, or the proceeds of them, from the intended purpose— Ravlojiraw *v.* Balvantrao Venkatesh. (1) This

(1) 5 Bom. 437.

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

principle has been recognized in many decisions (1) Mussamat Kustoora Komaree *v.* Monohur Deo. (2) It often coincides in its operation with another principle, *viz.*, the compulsory force of a special family custom of inheritance, which prevents alienation of the patrimony beyond the family, (3), Thakur Ishri Singh *v.* Thakur Buldeo Singh (4) and in some cases even its partition within the family (5) while it replaces the ordinary rule of the joint inheritance of a group of sons by that of primogeniture or some other mode of singular succession.(6) When an estate is freed from its connection with a public office, the reason arising from that connection for the preservation of the estate intact and unincumbered necessarily fails. There is not in the lands themselves, according to Hindu law, any inherent quality limiting them to special kinds of ownership and devolution. (7) They become subject to the ordinary laws of descent and disposal, just as where a particular custom concerning them has been abandoned (8) ; or they have passed into a family not subject to

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(1) West and Buhler H. L. 3rd Edition, 741, 742, 846.
(2) Cal. W. R. for 1864, p. 39.
(3) West and Buhler, H. L. 159. 184.
(4) 10 Cal. 807.
(5) West and Buhler, 743.
(6) West and Buhler, 68. 156, 158.
(7) West and Buhler, 744.
(8) Ibid, 3, 4.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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the custom—Shewlal Dhurmchand *v.* Bhaichand Luckhoobai (1); Abraham *v.* Abraham (2); Soorendra Nath Ray *v.* Mussamat Hera Monee Burmoneah. (3)

Family custom may bind successor, even after abolition of services.

"But though the political and public tie, which kept a Vatan estate together, may thus have failed, a concurrent family custom producing an effect wholly or partly the same, may continue and may singly bind the hands of the successive holders of the property as strictly as before. (4) The abolition of the public duty does not in this sense, any more than the remission or the imposition of the land tax, alter the nature of the estate; Keval Kuber *v.* The Talukdari Settlement Officer (5); Raja Leelanund Singh Bahadur *v.* Thakur Manoranjan Singh. (6) It is only necessary to bear in mind that in this estate the proprietory relation of a family to certain lands is not by Hindu law a quality of the lands; it is a jural character of the family (7); Rani Padmovati and Babu Doolar Singh (8); Rani Srimuty Dibeah *v.* Rany Koond Luta (9); and Chundra

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(1) See 7 Harr. 7 D. A. Ret. 195.
(2) 9 Moore 242.
(3) 12 Moore 9.
(4) West and Buhler, H. L. 2, 744.
(5) 1 Bom. 586.
(6) L. R. I. A. Sub. 18.
(7) West and Buhler, H. L. 744.
(8) 4 Moore 259.
(9) 4 Moore 292.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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Sheekhur Ray *v.* Nobin Soonder Roy. (1) If the family custom forbids alienation beyond the life of the alienor the custom will operate equally after the patrimony has ceased to be a Vatan in the technical sense as before. (2) That such a custom exists, or does not exist, may, in most cases, be gathered with reasonable certainty from the previous practice of the family. If, while the Vatan has been reserved for the office-holding member, the rest of the family estate has been sold or mortgaged or divided or dealt with as an ordinary joint property, that is an indication that no special custom has prevailed ; that the Vatan has been kept together, not by the family law, but by the official obligation. In some cases the Vatan estate itself has been distributed within the family or group of vatandars after the fashion of an ordinary divisible property (3), though kept from leaving the family by the expressed or understood terms of the official tenure. (4) When the office ceases, the tenure ceases too, though not by the office becoming a sinecure.

When office ceases tenure ceases.

The Government of Bombay *v.* Desai Kallianrai Hakoomutrai (5), and there being no special family custom, the property may be dealt with in the usual way—Adrishappa *v.* Gurushidappa ;(6)

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(1) 2 W. R. 197.
(2) West and Buhler, 173.
(3) See Act XI of 1843, see 13.
(4) West and Buhler, 173.
(5) 14 Moore 551, 558.
(6) 7 I. A. 162.

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ADVANCEMENT OF LEARNING
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Desai Maneklal Amratlal *v.* Desai Shiwlal Bhogilal (1).

"It seems that this result is contemplated by the Bombay Acts II and VII of 1863. The former is the one that applies to the southern districts of the Bombay Presidency, whence the present case comes. Section I of the Act enables the Governor in Council to make a summary settlement with the holders of land who claim exemption from the land tax; but clause 2 of the section excepts from the rule "lands held for service." By Section 16 the Governor in Council may determine what are and are not "lands held for service," and where he has once made a settlement under the Act, he has conclusively elected to treat the estate embraced in such settlement as land not "held for service," since such a tenure would make the settlement impossible. (2) Accordingly Section 2 provides that such "lands shall * * be the heritable and transferable property of the * * holders, their heirs, and assigns, without restriction as to adoption, collateral succession, or transfer." It is plain that such language must have been used with the intention of wholly freeing settled lands from official obligation. The terms on which the proposed benefits are to be secured are an annual payment of one-fourth

Settled lands free from official obligation.

(1) 8 Bom. 426.

(2) See the Rules under Bom. Act II of 1863 and Act VII of 1874.

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of the land-tax previously remitted, + $\frac{1}{6}$th of the full land-tax. On such terms the estate, with which we have now to do, has been settled. It is no longer affected with a liability on account of service; and unless as a family estate, subject to a special family custom (Soorendra Nath Roy *v.* Musst. Heeramonee Burmoneah (1); Bhan Nanaji Utpat *v.* Sundrabai) (2) it has been become in all respects, except its partial exoneration from land-tax, like the ordinary landed property of the district.

Does abolition of services subsequent to alienation destroy rights of heirs.

"There is a question which may be regarded as a particular form of the third one submitted to us, and which seems to arise in this case. It is this, where service lands, or what were deemed service lands, have been aliened, and at a later period the service has been disclaimed or abolished, does this latter event render indisputable by the alienor's heirs the title of the alienee in possession which, had the liability to service continued, might have been disputed. Assuming that there is no special family custom operating apart from the law, which preserves service lands for the intended uses, it seems that the answer to the question thus proposed, must be in the affirmative, with an addition of the terms on which family property can usually be aliened. The service lands are a

(1) 2 Moore 91.

(2) 11 Bom. H: C. 249, 269.

CENTRAL LIBRARY

property, not merely a remuneration ; otherwise the right to them would cease, with a discontinuance of the service—Forbes *v.* Meer Mohamed Tuquee, 13 Moo., I. A. 464 ; Rajah Leelanund Singh Bahadur *v.* Thakoor Mununjan Singh, L. R. Ind. ap. sup. Vol. 182. James Joseph Sparrow *v.* Tanaji Rao Rajah Sirke, 2 Bott., R. 501. Comp. Co. Lit, 42, 204. As a property they would, subject to known restrictions, be bound by the transactions of the owner for the time being ; Trimbak Balkrisna *v.* Narayanrao Damodar Dabhalkar ; (printed judgments for 1884, p. 120.) The change in the character of a holding on the death of a particular tenant from tax-free inam to taxable rayatwari did not, it was ruled in Yishnu Trimbak *v.* Tatia, 1 Bom. H. C. Rep. 22 and Rajkishen Singh *v.* Ramroy Surma Mozoomdar, I. L. R., 1 Cal. 186, destroy the original estate or free the lands from specific liens created by the last inamdar. Here there has been an imposition, not of the full land tax, but of $\frac{3}{16}$ths of it. This would not destroy the previous estate, nor would it annul a prior alienation. The nullity of the alienation, if it is null, must arise from a character possessed by the estate at the time of the attempt to alien. On a literal construction of the regulation, the estate held by the Vatandar would be inalienable. It is conceded, however, that it was not absolutely inalienable ; the Vatandar's conveyance was valid, at least

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for his own life : Krishnarav Ganesh *v.* Rangrav (1) and Ravlojirav *v.* Bulvantrav Venkatesh. (2) Thus the prohibition against alienation has been allowed to deprive a Vatan of the usual incidents of an estate only so far as was necessary to prevent its permanent severance from the services annexed to it, (3) Zemindar of Sivagiri *v.* Alwar Ayyangar, (4) Muttayan Chetti *v.* Sivagiri Zemindar, (5) Raja Nilmoni Singh *v.* Bokranath Singh, (6) Muttyan Chettiar *v.* Sangilivira Pandia Chimnatambier. (7) The nature of the estate, as such, was not otherwise varied from the common type.

"In the case of the Abergavenny estates (8), where there was special statutory prohibition against alienation, it was still said : "It cannot be contended that, in consequence of the limitation imposed upon them, the successive holders of the estate are not to be regarded as tenants-in-tail at all. The limitation of the estate * * necessary makes each succeeding holder of the estate a tenant-in-tail, and what follows comes as a proviso upon the Statute. (9)

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(1) See 4 Bom. A. C. Rep. I. A. C. J.
(2) I. L. R. 5 Bom. 437.
(3) See West &c. Buhler H. L. 162, 163.
(4) I. L. R. 3 Mad. 42.
(5) I. L. R. 3 Mad. 370.
(6) L. R. 9 I. A. 104.
(7) Ibid 144.
(8) L. R. 7 Ex. 145.
(9) L. R. 7 Ex. per Cleasby, B. at p. 153.

CENTRAL LIBRARY

So here the Hindu law makes each succeeding holder take as an heir to his predecessor, notwithstanding the collateral contingent operation of the rule for preserving the Vatan from dissipation (1) Timangovda *v.* Rangaugavala (2). In the case of an alienation by the Vatandar in possession, the successors reclaiming after his death would do so by virtue of the special right conferred on them incidentally to their obligation to perform the service; and the incident would cease along with the obligation, Krishnarav Ganesh *v.* Rangraretal (3). As heirs they could retain only in the same circumstances as other heirs. The right of repudiating the ancestor's transactions arose through the office descending; in this sense, it was that the alienation was void against the heirs, Ravlojirav *v.* Balvantrav Venkatesh (4). If legally possible, it was but voidable, and the special burden on the lands having made the alienation not originally null, but only subject to defeasance for the benefit of the service. Adrishappa *v.* Gurushidappa (5). That cause for recovery could no longer avail when the service itself had once been finally dispensed with."

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(1) West and Buhler H. L. 184 (a).
(2) Printed Judgments for 1878, p. 240.
(3) See 4 Bom. H. C. Rep. at p. 15, A. C. J.
(4) I. L. R. 5 Bom. 437.
(5) See I. L. R. 4 Bom. at pp. 502, 503. West and Buhler H. L. 163.

CENTRAL LIBRARY

Vatans partible but may be impartible by custom.

Vatans were originally impartible, but have now come to be regarded as partible, until a custom to the contrary is proved, (1) In the case of the Vatan of a hereditary Desai, it was held that it lay upon the party alleging it to prove that the estate was impartible and to prove by evidence the nature of the special tenure or special family custom or district or local custom which must be sufficiently strong to rebut the operation of the ordinary rule of law by which property generally is partible. (2) A Vatan however may be proved to be impartible and discontinuance of services would not make an impartible estate partible. (3)

Partition of Vatan allowed subject to the right of Desai to receive the income out of it for the performance of duties.

In a suit for the partition of part of a Deshgat Vatan brought by the younger brothers of a joint Hindu family against their eldest brother, the Desai who alleged that the Vatan was impartible subject to a right by custom that younger brothers should receive maintenance out of the income, it was held by the Privy Council, that until the Vatan was proved to be impartible by evidence of custom sufficient to rebut the presumption of the prevalence of the general Hindu Law, it must be considered as partible and when it was found that the office of the Desai was

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(1) Padapa *v.* Swami Rao, 24 Bom. 556, P. C.

(2) 27 Bomb. 353 P. C., 30 I. A. 17.

(3) Adrishappa *v.* Gurushedappa, 7 I. A. 162. Gopal Hari *v.* Ram Kant, 21 Bom. 458.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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hereditary and the Vatan appertained to it, the decree for partition must be made subject to the right of the Desai to receive any income out of it for the performance of his duties to which he might be entitled under any law in force (Adrishappa *v.* Gurushédappa, 4 Bom. 494, 7 I. A. 162).

The Desai as we know was the chief revenue officer of the district under both the Mahomedan rule and the Mahratta rule which followed it. In the case of the Inam of the Navalgund Desai, which came into existence in the time of the Bijapore monarch in the seventeenth century and continued under both the Mahratta and the English administration, the Desai exercised the option under Sec. 2 of Act II of 1843 of commuting his service by payment of an annual sum in the nature of a quit rent in respect of his Inam land which was his Potgee (allowance). It was recently held that when that was done, it ceased to be a service tenure with all its incidents of impartibility and inalienability and became ordinary rent land notwithstanding its existence for 210 years (1).

After commutation becomes partible and alienable.

Vatans in Bombay are inalienable (see Bom. Act 3 of 1874 and Act 5 of 1886). A mortgage and sale in execution of it, before 1827, could have no force beyond the life of the mortgagee. (2)

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(1) Brendan *v.* Sundarabai 38 Bomb. 272.

(2) Ramangavda *v.* Shivapugadda, 22 Bom. 601, see 20 Bom. 423.

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ADVANCEMENT OF LEARNING
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An alienation by sale or mortgage by a Vatandar was void in its inception against the heir of the Vatandar under Reg. 16 of 1827 and by reason of the repeal of that regulation by Act 3 of 1874, it did not become alienable. When a widow without right remained in possession of Vatan property as Vatandar and made an alienation, neither she nor the alienee could get a title by adverse possession and her heir was not bound by the alienation and could recover it after her death. (1)

Vatan lands as we have seen above can not be validly alienated beyond the life of the alienor under section 11 of Act 3 of 1874. The collector can declare an alienation void and under section 11 A, he can summarily recover possession but a mere order by him that possession, be delivered to an applicant, it has been held, is without jurisdiction and does not prevent the acquisition of title by 12 years adverse possession, though the collector may not be bound by the provisions of the Limitation Act. (2)

Gordon settlement.

In 1864 a settlement, which is known as the Gordon Settlement, was made at the instance of the Government by a committee of which Mr. Gordon as collector was the Chairman, with the Vatandars of the Southern Mahratta country.

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(1) Padapa *v.* Swami Rao, 24 Bomb. 556 P. C.

(2) Magan Chand *v.* Vithalrav 37 Bomb. 37; Narasinha *v.* Vaman, 34 Bomb. 91; Amrita *v.* Shridhar, 33 Bomb. 317; Chandra *v.* Bahmabai 17 Bomb. 362; Shri Balkrishnaji *v.* Secretary of State (1892) printed judgments p. 324.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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By it the Government relieved certain Vatandars in perpetuity of the obligation to perform services attached to their offices in consideration of a '*Judi*' or quit-rent charged upon the Vatan lands. Section 15 cl. 2 and 3 of Act 3 of 1874 gave legal effect to this arrangement.

Did not become partible alienable property.

A question arose whether in consequence of the above arrangement the Vatan lands, which were impartible or inalienable, became ordinary partible alienable property. It has been held that the Gordon Settlement did not change the character of the estate and did not convert the Vatan lands into private property but left them attached to hereditary offices, which although freed from the performance of service, remained intact (1).

Mortgages and leases inoperative beyond lifetime.

As a consequence of the above, it has been held that an alienation by way of mortgage of any portion of the Vatan has no force beyond the life of the Vatandar mortgagor (2). A lease also by a Vatandar can thus be enforced only during the lifetime of the grantor (3).

Females postponed to males.

By the Bombay Hereditary Offices Act 3 of 1874 as amended by Act 5 of 1886, female members of a Vatan are postponed to male members in matters of succession and when by a will property is bequeathed to two

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(1) Appaji Bapuji *v.* Keshava 15 Bomb. 13; Narasinha *v.* Vencatrao 34 Bomb. 91.

(2) Padapa *v.* Swami Rao, 24 Bomb. 556 P. C.

(3) Narasinha *v.* Vencatrao, 34 Bomb. 91.

CENTRAL LIBRARY

daughters and the widow is enjoined to give the property to no body else, the latter can not adopt and the next male member must succeed. (1)

A widow once adopting can not adopt again.

As a legal consequence of the above Acts a widow after once adopting can not adopt again after the death of the adopted son, as the succession could not vest in the mother (2).

Inams of Madras.

Inams in the Madras Presidency are of three kinds; one is called Bhattavirtti or "assignment of revenue or lands granted to Brahmans at low rents for their subsistence," Inams for private service; the third are for services of a public nature.

B hattavartti Inams.

In the case of Bhattavartti Inams, it was held that the mere settlement with one as the head of the family did not destroy the rights of the other members (3).

Law about Service Inams.

Inams attached to public offices, such as Karnam, are governed by certain Inam rules, and by Act 3 of 1895, and Act 4 of 1866.

Original Status of Inamdars.

Inams, though they formed the emoluments of a hereditary office, were considered as "family property only in the sense in which hereditary office itself belonged to the family. From the nature of things, the office can be held only by one member of the family at a

(1) Malgandi Paragunda *v.* Babaji 37 Bomb. 107.

(2) Bhimabai *v.* Tiyappa 37 Bomb. 598. Collector of Madura *v.* Moolto Ramalinga, 12 Moore 397.

(3) C. Venkanna *v.* M. L. Narayana Sastrulu, 2 M. H. C. R. 327; A. Vissappa *v.* A. Ramayagi, 2 M. H. C. R. 34.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

time, either by the principle and custom of primogeniture or by rotation among the different members or branches of the family and in theory, the Inam forming the emoluments of such office can be held and enjoyed only by such member, though as a general rule, the custom was to hold and enjoy the Inam as any other joint family property and even share its income, the incumbent, for the time being, of the office taking it naturally a larger share"(1) the above observations of Sir Bhashyam Ayyangar. J. correctly represents the status of an Inamdar. He further says : " According to the theory of the common law of the land applicable to hereditary grants of public revenue as Inam in favour of individuals and to the interpretation of such Crown grants, succession in such cases is, or is, at any rate supposed to be, limited to the undivided brothers and to the direct lineal heirs including a daughter's son of the last incumbent, as also his widow, and failing them, to the direct lineal heirs of the original grantee." And under that law, it is or it is supposed to be, competent for the Government to resume personal Inams when the reversion falls in—or in the language of the Revenue Department—when the Inam lapses either by expiration of the lives for which the Inam was granted or by reason of the extinction of the direct lineal

(1) 26 Mad. 355.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

heirs of the body of the original grantee or of a forfeiture incurred by alienation to a stranger" (1).

Legislative provisions about Inams.

The effect of legislation about Inams is thus compendiously stated by Sir Bhashyam Ayyangar J: "Section 2 of Regulation VI of 1831 (now repealed and superseded by Madras Act III of 1895) declared that all emoluments derived from lands annexed by the State to hereditary village and other offices in the Revenue and Police Departments were inalienable from such office by mortgage, sale, gift or otherwise and all transfers thereof by the holders of such offices were also declared to be null and void. Section 3 of the same regulation barred the jurisdiction of civil courts to entertain claims to the possession or succession to such offices or to the enjoyment of any of the emoluments annexed thereto and invested the Collector of the district in which the claim has arisen or may arise to adjudicate upon such claims. The effect of enfranchising a service Inam is clearly declared by Madras Act IV of 1866. Section I of that Act enacts that a service Inam which has been enfranchised from the condition of service by the Inam Commissioner shall be exempt from the operation of Reg. VI of 1831. Section 2 enacts that the title deed issued by the Inam commissioner shall be

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(1) 26 Mad. p. 345.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

deemed sufficient proof of the enfranchisement of the land previously held on service tenure. * * * The title deed (in the form sanctioned by the Government) declares the consequential result of such enfranchisement, *viz.* that the grantee will thereafter hold the Inam as his own absolute property which he can dispose of as he thinks proper, subject only to the quit-rent imposed.

"Under Regulation VI of 1831 the Inam being annexed to the office can devolve only with the office and can not be transferred. The Government could also resume it, making other provisions for the remuneration of the office holder. By enfranchising the Inam and imposing a quit-rent Government absolutely renounces all its rights in the Inam and as between the Government and himself the grantee's title becomes absolute. The enfranchisement of personal Inams also stands exactly on the same footing. Under Regulation 4 of 1831 (now repealed) and Acts XXXI of 1836 and XXIII of 1838 all hereditary and personal Inams were removed from the Courts of Civil Jurisdiction and the power of deciding on claims to the same was reserved to Government. Act IV of 1866 was passed exempting from the operation of the said Regulation and Acts all such Inams as may be enfranchised by the Inam commissioner in consideration of an annual quit-rent and placed in the same position as

CENTRAL LIBRARY

other descriptions of landed property by being converted into freeholds in perpetuity." (1)

Enfranchisement of service Inams and rights of family members.

Act 4 of 1866, authorized the enfranchisement of service Inams. The Government relinquished the condition of service attached to the Inam and the reversionary interest they had in consideration of a quit rent imposed on the Inam according to the rules framed by them. Inam rule 25 lays down that "the settlement will be made with the registered holder of the Inam who according to existing practice is alone considered responsible to the government. But this rule will not interfere with the enjoyment of subordinate shares in the Inam by other members of the family, subject to such quitrent or other conditions as may be imposed on it by the new settlement, in communication with the head of the family."

There is a conflict of rulings about the legal estate of an Inamdar, who has enfranchised his Inam.

In the case of an hereditary service Inam attached to the office of peon—every office however low had under the old system land attached to it—which it was alleged had been enjoyed by the members of a family who performed the service by turns, it was held that "the land was appurtenant to the office, and the Government determined to sever it from the

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(1) Gannaiyan *v.* Kamarchi 26 Mad. 347.

CENTRAL LIBRARY

office and to allow the office holder for the time being to enfranchise it," and "as the appellant was never the holder of the office he could not have a claim on the emoluments." (1)

The effect of emfranchisement, it was also held, was to free the lands from their inalienable character and to entitle the Inamdar to deal with them as they pleased. (2)

But when a childless widow was in possession of an Inam which belonged to her father and which she got enfranchised by payment of a certain sum and obtained a Potta from the Government, it was held that the Inam did not become her absolute property and the effect of the enfranchisement was simply to release the reversionary right of the Government. The widow when she exercised the right of enfranchisement should be considered as doing so for the benefit of the family and the reversioners could therefore question and set aside an alienation made by her. (3)

A Full Bench of the Madras High Court once decided that enfranchisement involved a resumption of the Inam by the Government and a fresh grant in favour of the person named in the title, who had an absolute alienable

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(1) Bada *v.* Hussu Bhai, 7 Mad. 236.
(2) Vencatarayadu *v.* Vencatarayadu, 15 Mad. 284.
(3) Narasimha Charlu *v.* Srinivasa, 6 Mad., L. J. 119.

CENTRAL LIBRARY

title. (1) This view was adopted in several subsequent cases. (2) But recently another view has prevailed. That view was propounded in an elaborate judgment by Sir Bhashyan Ayyangar. (3) A recent Full Bench after considering all the previous cases and relying on Section 1 of Act 8 of 1869 have held that "the enfranchisement disannexes the Inam from the office, converts it into ordinary property and releases the reversionary rights of the crown in the Inam but it does not confer on the person named in the title deed any right in derogation of those possessed by other persons in the Inam at the time of the enfranchisement." (4)

The earlier Full Bench ruling ignored the rights of members of the family to which the Inam was supposed to belong, and who alone had the privilege of performing the services, but laid down a very simple rule. The Inamdar had admittedly an extra share for the performance of the services. After the enfranchisement, he can have no such share and the property can be partitioned like ordinary joint family property. It may be said under the new rule the property may be proved to be impartible as well as inalienable, by custom

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(1) Vencata *v.* Rama, 8 Mad. 247 F.B.

(2) Vencatarayadu *v.* Vencata, 15 Mad. 284, Dharampragada *v.* Kadambari, 21 Mad. 47, Subbaraya *v.* Kamu, 16 Mad. 284.

(3) Gunnaiyan *v.* Kamakchi, 26 Mad. 339.

(4) Pengala *v.* Bommereddipali 30 Mad. 436, See 32 Mad. 8.6.

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

of the family or of the District. But the supposition that all the descendants of the original grantee, even though separate from the Inamdar, have shares according to Hindu Law (excluding the extra share which he was entitled to before enfranchisement) excludes the idea of such a custom. As the law now stands however, every male descendant of the original grantee has a share in the Inam and can prevent an alienation by the present incumbent. Difficulties will arise when questions of succession and partition will come before the Courts.

Inam lands attached to offices are inalienable and not liable to attachment in execution of decrees. It was doubted whether Inam lands of Village Artisans, were so liable. A Full Bench of the Madras High Court have held that they are not liable under the Madras Hereditary Village Offices Act 3 of 1895 (1).

Inam lands attached to offices inalienable.

When can service tenures be resumed is a question of great difficulty and will be dealt with later on generally in connection with Ghatwali tenures.

Resumption of Service Inams

In Madras it has been held that a private Inam grant in consideration of past services and for the payment of *Kuttabadi* or quit-rent and for *Nakesh* or personal service has been held to be not resumable by the grantee, so long as the holder of the grant is willing and

(1) Kandappa A. Chary *v.* P. Vengama Naidu 37 Mad. 548.

CENTRAL LIBRARY

able to perform the service, whether it is required or not (1).

Resumption of Mokhasa grants.

In the case of a Mokhassa, which is a well known tenure in Northern Circars, it was found that it had been granted at a yearly quit-rent of Rs. 144 at a period antecedent to the British Raj on condition of service to provide one Naik and fourteen peons for guarding the Zemindars fort and treasury and to watch over his crops and to attend him on hunting or military expeditions, that the services had been rendered intermittently and not continuously and *batta* had been paid to the grantees when actually on duty, that the quit rent had never varied for a period of 120 years and there had been no interference with the devolution of the property from heir to heir and that there had been no instance of resumption. It was held that the tenure was hereditary and the Zemindar was not entitled to dispense with the services as not required and to resume the villages at his option (2).

Resumption grants subsequent to permanent settlement.

It has been held that in grants subsequent to the Permanent Settlement, to which services of a personal as opposed to public character are attached, the burden of proving that they are are not resumable is on the grantees (3).

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(1) Kamaravutu *v.* Raja of Pittapuram 26 I. C. 78. Mad W. N. (1914) p. 936.

(2) Vencata Narasinha *v.* Sobhanadare, 29 Mad 52 P. C.

(3) Vadiasupa *v.* Vyrechela 10 Mad L. J. 391, 12 I. C. 487.

CENTRAL LIBRARY

Section V.

Ghatwali, Digwari and other tenures for Military and Police Service.

History of Ghatwallis

We next go to Ghatwallies. The following account is given of their origin in a judgment of the Privy Council (1): "The three Provinces of Bengal, Behar and Orissa were ceded by the Mogul to the East India Company in 1765. At this time the territorial division of the Country was into *mouzas* or villages occupied by Ryots; Pergunnahs, each of which included several villages; and Zemindaries, varying in extent, from a moderate English estate, to Districts equal to or larger than many European principalities. The Zemindary of Beerbhoom, which immediately adjoins Khurruckpore, is stated in a document in 1786, to which we shall have occasion to refer, to be twice as large as the Kingdom of Sardinia. Khurruckpore was probably of inferior but still of vast extent. Many of the greater Zemindars, within their respective Zemindaries were entrusted with rights and charged with duties, which properly belonged to the Government. They had authority to collect from the Ryots a certain portion of the gross produce of the lands. They, in many cases, imposed taxes and levied tolls and they increased their incomes

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(1) Raja Lelanund Sing *v.* The Bengal Government, 6 Morre. p. 102.

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ADVANCEMENT OF LEARNING
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by fees and perquisites and similar exactions, not wholly unknown to more recent times and more civilized nations. On the other hand they were bound to maintain peace and order and administer justice within their Zemindaries and, for that purpose, they had to keep up Courts of civil and criminal justice, to employ *Kazees*, *Canoongoes* and *Thannadars*, or a police force. But while as against the Ryots and other inhabitants within their territories, many of these potentates exercised almost regal authority, they were, as against the Government, little more than stewards or administrators. * * * Besides the disorder which prevailed generally through Provinces, particular Districts were exposed to ravages of a different description. The mountain or hill districts in India were at this time inhabited by lawless tribes, asserting a wild independence, often of a different race and different religion from the inhabitants of the plains, who were frequently subjected to marauding expeditions by their more warlike neighbours. To prevent these incursions, it was necessary to guard and watch the *Ghats* or mountain passes, through which these hostile descents were made; and the Muhammadan rulers established a tenure called Ghatwally tenure, by which lands were granted to individuals, often of high rank at a low rent or without rent, on condition of their performing these

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

duties and protecting and preserving order in the neighbouring Districts. * * * At this period Raja Kadir Ali was the Zemindar of Khurrukpore. * * A very large quantity of lands within this District had been granted by the ancestors of the Raja on the *Ghatwally* tenure. * * * The extent and particulars of these vast estates and the nature of the *Ghatwally* tenures were well known to the Government at the time the settlement was made. Some years before, in consequence of disturbances, which had taken place in the country during the time of *Kadir Ali*'s father the Government had found it necessary to interfere with a military force and having displaced the then Raja and restored tranquility, had placed the Zemindary under the charge of one of their own officers Mr. Augustus Cleavland. * * * It appears from evidence in the cause (report of the Collector of Bhagulpore, of the 19th November 1813) that Mr. Cleavland during the time that he was in charge of these estates, had granted no less than 87,084 *bighas* of land in this and the adjoining District upon Ghatwally tenure. It appears from other evidence (in Mr. Sutherland's report dated the 8th June 1819) that the grants before Mr. Cleavland's time to the Ghatwals reserved a payment of 2 annas per *bigha* as a fee or perquisite to the Zemindary; that some Sunads were granted unadvisedly by Mr. Cleavland without such reservation but that he afterwards insisted on such payment being

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

History of Ghatwallies.

made to the Government and that all grants subsequently made by the Raja of *Khurackpore* contained the same reservation. In Mr. Grant's Analysis of the Finances of Bengal addressed to the Court of Director in the year 1786 and printed in the Appendix to the Fifth Report of the Select Committee on the Affairs of the East India Company, p. 268, the Zemindary of Beerbhoom is stated to have been conferred by Jaffier Khan on an Afghan or Pathan tribe, "for the political purpose of guarding the frontiers on the West against the incursions of the barbarous Hindus of Jarkhand by means of a warlike Mahomedan peasantry entertained as a standing militia with suitable territorial allotments under a principal landholder;" and Mr. Grant afterwards describes the tenure "as in some respects corresponding with the ancient military fiefs of Europe, inasmuch as certain lands were held Lakheraj or exempt from the payment of rent, and to be applied solely to the maintenance of troops." There is no doubt that the tenures here spoken of are Ghatwally tenures though they are not mentioned by that name. Beerbhoom immediately adjoins Khurrackpore and in 1795 some Ghatwally lands were transferred from Beerbhoom to the District of Bhagulpore in which Khurrackpore is situate."

"In 1813, a report was made by the Collector of Bhagulpore to the Magistrate of Beerbhoom, in answer to certain inquiries with

CENTRAL LIBRARY

respect to Ghatwally lands in his District. The Collector states that the Ghatwally lands in his District are of four kinds: First. The lands already referred to are granted by Mr. Cleveland (who had granted some new Lakheraj Ghatwallies, in 1781 on a rent of 2 as per bigha). These he states to have been allotted to the owners of the forests, at the foot of certain mountains, which he names in various Pergunnas and amongst others "Pergunnah Kankgoles, and in some other villages of the Kharruckpore estates to certain Ghaṭwals and watchmen in lieu of salaries in the proportion of the number of watchmen, attending the said Ghatwals, to attend to and guard the watch stations at the passes, and to patrol the precincts of the villages that no mountaineers might be able to descend from those passes of the mountains to concert night attacks, to invade or assault or to plunder money or cattle or to create disturbance." The second class, the report describes as, "The Ghatwals attached to the Khurrackpore estate who pay a stipulated rate of rent for their lands and villages, being bound to protect and guard the highways, to watch the stations at the passes, to prevent disturbances being created by the mountaineers, thieves and highwaymen. They hold their lands granted by the Zemindar of Kharruckpore, except some who have received theirs from the former authorities."

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

"The report then proceeds to state: "That when the Zemindar or Government authority wishes to appoint a Ghatwal to guard the frontiers of the villages, it is his duty to ascertain the produce of villages, the quantity of Ghatwally lands therein and after deducting a certain rate in the rates of the guards with the Ghatwals in lieu of wages to fix a certain rent to be paid by the Ghatwals." After mentioning other descriptions of Ghatwally lands he states his opinion, that the Ghatwals have no right of inheritance or proprietory interest in their lands but hold right of possession as long as they perform the terms and conditions of their sunnuds. The report then states that at the time of the Decennial Settlement the Ghatwals were not treated as independent Talookdars; that no settlement was made with them, but that they were included in the settlement of the Zemindar of whom their lands were held. In 1816, another report was made by the Collector of Bhagulpore in which it is stated, that the Ghatwals pay a fixed rent to the Zemindar of Kharruckpore and continue under his control, direction and subjection, while the raja is answerable to the collector for the rents of the entire District of Kharruckpore."

"Regulation 29 of 1814 declared that "the lands held by the class of persons denominated Ghatwals, in the district of Beerbhoom form

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

a peculiar tenure to which the provisions of the existing regulations are not expressly applicable" and "every ground exists to believe that according to the former usages and constitutions of the country, this class of persons are entitled to hold their lands generation after generation, in perpetuity subject to the payment of a fixed and established rent to the Zemindar of Beerbhoom and to the performance of certain duties for the maintenance of the public peace and support of the Police." It was enacted that they had to pay the rent which was assessed on them, direct to the Government, the latter undertaking to pay "the difference between the amount of the revenue assessed on the Ghatwals and the fixed assessment of revenue of that portion of the Zemindary of Beerbhoom payable to the Government, by the Zemindar of Beerbhoom." Thus the Ghatwals of Beerbhoom were given a position quite independent of the Zemindar which they did not possess before.

"This description is confined in terms to the District of Beerbhoom, but in the case of Hurlall *v.* Jorawun Sing (6. Sel. Rep. 170) which was decided in 1837, a question arose as to the nature of these tenures generally, the point for decision being, whether they were divisible on the death of a Ghatwal or descended to his eldest son. One of the Judges states that those tenures are very common in the Nerbadda territory for the protection of the ghats. Another

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

of the Judges seems to consider them as Chakeran lands; and the Court was of opinion, that the lands being held conditionally for the performance of certain defined duties, they were not divisible on the death of the Ghatwal but descended to the eldest son. "Lands of this description could properly be considered as lands of which the Zemindars had been permitted by the Government to appropriate the produce to the maintenance of Tannah or Police establishments. They were held by a tenure created long before the East India Company acquired any dominion over the country, and though the nature and extent of the right of the Ghatwals in the Ghatwally villages may be doubtful, and probably differed in different Districts and in different families, there clearly was some ancient law by which these lands were appropriated to the services of Ghatwals; services which although they would include the performance of duties of police were quite as much in their origin of a military as a civil character and would require the appointment of a very different class of persons from ordinary police officers. We find accordingly that the office of Ghatwal in this Zemindary was frequently held by persons of high rank before the date of the Regulations.

"Before the date of the Regulations and in 1783 we have a letter from the Collector of Bhagulpore to the Raja Kader Ali informing

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

him that the Ranee Surbessuree had been dismissed from her office of Ghatwal of Juaimee Humapa, which is situate in the Khurruckpore estates by order of the Governor-General in Council and intimating that "as the office is in your Highness's gift your Highness will, should you deem it necessary and proper, appoint a person to the office of Ghatwal of the said Pergunah to watch day and night at the said Ghat." Surely the language here used in speaking of the Ghatwal is little suited to the appointment of a police officer. It is rather that which in ancient times in England might have been addressed to a Lord of the Marches with respect to a chieftain under his orders.

"We have a letter from the Collector of Bhagulpore to the Raja of Khurruckpore on the 18th of September 1808 in which he observes: "As the settlement of rent between the watchmen and yourself rests with you, as also does the dismissal and transfer of Ghatwals and as is usual and customary on your estate, the Magistrate has no objection to the measure (which the Raja had proposed to take) nor is the Collector opposed to the step:" and in the reports of the Collectors to which we have already referred, it is stated, that it is the province of the Raja to appoint and dismiss the Ghatwals attached to the Khurruckpore estates, and that he usually but not always makes a report to the Government when he does so,

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

and "that the settlement rests with him and he arises or depresses the rent."

"Some years before the year 1855, the Government of Bengal claimed a right to resume or reassess lands of considerable extent and value within the Zemindary of Khurruckpore in the possession of various Ghatwals, who held them by Ghatwally tenure under the Zemindar. The claim was enforced by the Government, though opposed on the part of the Zemindar, and for some time at least on the part of some, if not all, of the Ghatwals. The suits were numerous. At last the Zemindar brought one of them by appeal before Her Majesty in Council and upon that appeal in 1885, the Judicial Committee decided against the Bengal Government on grounds fatal in principle to its entire claim of resumption and reassessment as to all Ghatwally land." (1)

Ghatwalis of Beerbhoom —their incidents.

The Ghatwallis of Beerbhoom described above are all hereditary and impartible. Ghatwallis may be held under Sanads conveying an hereditary indefeasible right or on payment of a quit rent with enjoyment of profits in lieu of wages for services. In the latter case, when the holder has ceased to perform the services, the tenure may be resumed. (2) But even in the latter case, when the tenure has been held

(1) Raja Leelanund Sing *v.* Government, 6 Moore, 105.

(2) Leelanund Sing *v.* Nussul Sing, 6 W. R. 80. Mahabub Hossein *v.* Patusi Kumary, 10 W. R. 179.

CENTRAL LIBRARY

Whether hey are hereditary.

from before the Decennial Settlement, the omission of the words of inheritance does not show that it is not hereditary and must be presumed to be hereditary, when it has descended from father to son for many generations. (1) Such tenures are dependent talooks under Reg. 8 of 1793. (2)

Ghatwalis are impartible.

It was very early settled by decisions that Ghatwalis are impartible. The Sudder Court in the case of Hur Lall Singh *v.* Jorawan Singh VI Select Reports pp. 169-171 laid down that "the lands are held conditionally on the due performance of certain defined duties. They belong to the office and should not be frittered away into portions inadequate to the remuneration of the duty demandable from the occupants of the whole as a whole" and that they could not be partitioned "even with the sanction of an entere family or clan."

Birbhum Ghatwalis heritable, and inalienable.

Ghatwallee property in Birbhum is not under Reg. 29 of 1814 strictly speaking ancestral but merely held by each succeeding Ghatwal under a lifetenure on condition of his performing service, but the descendants of the Ghatwal are under Sec. 2 entitled to succeed to the tenure in preference to strangers. It is now settled that the Ghatwals of Birbhum are possessed of estates of inheritance without the

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(1) Kooldeep Narayun *v.* Government of India, 14 Moore. 24, 11 B. L. R. 71.

(2) Leelanund *v.* Monoranjun, 3 Cal. 251.

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power of alienation. It was so decided in a case reported in Marshall's Reports p. 117. The late Sudder Court (S. D. A. 1853 p. 900) also held that "Ghatwallee tenures of Beerbhoom being not the private property of the Ghatwals but lands assigned by the State in remuneration for specific public service are not alienable or attachable for personal debts."

Principle of succession.

The rights of succession to Ghatwalis, it has been held, are not governed by the ordinary rules of the Mitakshara or the custom of a particular family to their full extent. The rule of succession depends on the incidents of the tenure which is indivisible and follows the ordinary Hindu Law and custom of the family, so far as they are not inconsistent with them (1). These tenures were however, supposed to be the exclusive property of the Ghatwals under Reg. 29 of 1814 and not joint property and female heirs were not excluded without custom to the contrary (2).

Succession not limited to heirt of the body under Reg. 29.

A question arose whether on a construction of Section 2 of Reg. 29 of 1814, in respect of Birbhum Ghatwalis, succession could devolve only on heirs of the body. It has been held that the word "descendants" in the Regulation is not confined to heirs of the body

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(1) Anundo Rai *v.* Kali Prosad Sing, 15 Cal. 471 P. C.

(2) Doorga Persad *v.* Doorga Koeri, 4 Cal. 190 P. C. Chhatradhary *v.* Saraswati, 22 Cal. 256. See 6 Moore, 126, W. R. (Gap) 39, 9 B. L. R. 274.

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but includes heirs generally according to the particular law applicable (1).

How far attachable in execution.

These tenures and similar Jaghirs in the Pachet Zemindary are not alienable or liable to sale in execution against the holder for the time being. (2)

They are considered as life-tenures and a son succeeding does not take the estate as an asset, which the father's creditor can attach in execution, nor can they be sold even in execution of rent decrees (3).

It was held that in some cases that the proceeds of a Ghatwali are not liable to attachment for the debts due from the holder thereof. But recent cases have made a distinction and established that the surplus profits collected during the lifetime of a Ghatwali are his personal property and can be attached but profits accumulated after his death are not liable to attachment (4).

Surplus profits attachable.

As regards the power of the Ghatwals of Birbhum to grant permanent leases, there is a divergence of opinion.

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(1) Chhattradhari Singh *v* Saraswati Kumari 22 Cal. 156. See 10 W. R. 401 W. R. 1864 p. 39.

(2) Nilmony Sing *v.* Burko Nath, 9 Cal. 187 P. C. Grant *v.* Bansideo, 15 W. R. 38. Davies *v.* Dabee, 18 W. R. 376. Narain Mullick *v.* Badi Roy, 29 Cal. 227.

(3) Benode Ram Sein *v.* The Deputy Commissioner of Sonthal Pergunas 7 W. R. 178. Grant *v.* Bungshideo 15 W. R. 38. Davies *v.* Dabee 18 W. R. 376. See 9 Cal. 207 P. C.

(4) Rajkeshwar *v.* Bunshidhar, 23 Cal. 873, Kustoora Kumari *v.* Benoderam Sen, 4 W. R. 5 Mis. contra 9 Cal. 388.

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Beerbhoom Ghatwal's power to grant permanent leases.

In 1862 a Full Bench of the Calcutta High Court (1) laid down the following rule: "We think that the Ghatwals of Beerbhoom are under Section 1 Reg. XIV of 1819 possessed of estates of inheritance without the power of alienation; and that this estate can not be void so long as they perform the obligations of service and payment of rent incident to their tenure. It follows that a perpetual sublease granted *bonafide* to a party by Ghatwal will be good, not only during the tenancy of the grantor, but, after his decease, during the tenancy of his heirs; and consequently, that the only mode in which these last can legitimately set aside the alleged act of their ancestor is by a regular suit questioning the title set up." In a later case however, it was broadly laid down that a Ghatwal is not competent to grant a lease in perpetuity and his successors are not bound to recognize such an incumbrance and that a perpetual lease by a Ghatwal to his younger sons for the maintenance of his branch of the family is not binding on his successor. If it is conceded that the Ghatwal's estate is one of inheritance, impartible and inalienable, it is difficult to see why he can not make a maintenance grant to his younger sons, now that for all practical

(1) The Deputy Commissioner of Beerbhoom *v.* Rongololl Deo, W. R. F. B. (1862) 34.

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

purposes a Ghatwal holds his tenure nominally on condition of service. (1)

In a still later case Mr. Justice Dwarka Nath Mitter held that a mucurreri lease granted *bonafide* by a Ghatwal for the clearance of jungle was binding on his successor (2). The judgment was based on a finding by the Deputy Collector that "from time immemorial in that part of the country the Ghatwals have largely exercised the power of granting such leases for the clearance jungle and that the necessity for granting them arose from the combined influence of the extremely jungly character of the district, a considerable part of which is still covered with primeval forest, and of the unwillingness of persons to undertake the clearance of jungle lands at the risk of their capital and even of their lives, without the prospect of enjoying those lands from generation to generation at fixed rates being secured to them as a compensations for the sacrifices they have to make."

In the latest case on the question however, the High Court has held that granting even jungleburi permanent tenures is beyond the competency of a Ghatwal. (3)

Right to compensation money.

It has been held that the holder of a sub-lease, by way of maintenance grant by a

(1) Grant *v.* Bansi Deo, 15 W. R. 38 (Rohiny Ghatwali).

(2) W. R. Davies *v.* Dibee Mahtoon, 18 W. R. 376 (Bhagalpur Ghatwali).

(3) Narain Mullick *v.* Badi Roy, 29 Cal. 227.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Ghatwal is not entitled to any portion of the compensation money for lands acquired for public purposes and that a Birbhoom Ghatwal not being an absolute owner was only entitled to the interest of the compensation money, which he was bound to keep intact as a part of the Ghatwalee property (1). The superior Zemindar was also held in the above case as not entitled to any portion of the compensation.

Right of enhancement and ejectment by Revenue sale purchaser.

In cases of Ghatwalis created before the Permanent Settlement, when the Government dispensed with the Ghatwali services, the Zeminder could not resume the Ghatwali and a purchaser at a sale for arrears of Government revenue could not cancel them and it was doubtful whether he could enhance the rent (2). There is no case in which enhancement has been actually granted.

Digwars of Chotanagpore.

Digwars in Chotanagpore are very like Ghatwals of Beerbhum. Digwars of Tasra and Rabart in Jheria have been holding under a tenure called Digwari, which is ancient and hereditary, subject to the payment to the Zemindar of a fixed rent on condition of the performance of certain police or public duties, for the due discharge of which he is responsible to the Government, which alone exercises the

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(1) Ram Chander Singh *v.* Raja Mahomed Jowhuruzama, 23 W.R. 376 (Pathrole Ghatwali).

(2) Monarunjun Sing *v.* Leelanund Sing, 13 B. L. R. 124.

CENTRAL LIBRARY

power of appointment and dismissal from office.

Right to minerals.

A question arose whether the Zemindar had still such an interest in the land as to entitle him to mineral and underground rights notwithstanding the grant. The High Court held that he had no such right but the Privy Council held that mineral rights belonged to the Zemindar and not to the Digwar.(1) The same rule would therefore apply in the case of other Ghatwalis. The Privy Council however in the above case, say the following in respect of certain Ghatwalis: "Mineral rights were vested in the Ghatwals of Sarhat in the north-western part of the Birbhum Zemindari, but those Ghatwals paid their rent direct to the Government, and in other respects they were in a very peculiar position. They were dealt with by Reg. XXIX of 1814. They obtained the right to lease the minerals by the Act No. V of 1859."

The incidents of the Ghatwali tenures of Birbhum and the Sonthal Pergunnahs were the subject of special legislation in Regulation XXIX of 1814. They are declared to be perpetual and hereditary. The Commissioner has nominally the power of appointing the

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(1) Brojo Nath *v.* Durga Prosad, 34 Cal. 763. Overruled by Durga Prosad *v.* Brojo Nath 39 Cal. 696 P. C., see also 38 Cal. 845, 37 Cal. 723.

CENTRAL LIBRARY

successor (1), as also of removing a Ghatwal from office for incompetency or failure to perform his duties (2).

Power of appointment and dismissal.

It has been held that the Commissioner has no right to consider the eligibility of rival candidates but is bound to appoint the natural heir and the Civil Court can give relief when the commissioner acts beyond the scope of his authority (3).

Right of dismissal in Bankura.

In the Bankura District, Government in one solitary case exercised the right of dismissing a Ghatwal for misconduct which was held to entail forfeiture. (4)

Kurruckpore Ghatwalis of Bhagalpore their incidents.

Ghatwalis of Bhagulpore have been held to form part of the permanently settled estate of the Raja of Khurruckpore and are considered Zemindary Ghatwalis. The Raja of Khurruckpore has nominally the right to appoint and dismiss the Ghatwal (5) But the tenure is hereditary and impartible to which the eldest son or other sole heir according to custom succeeds as a matter of right (6). It was held in an early case that until appointment the heir has no right (7). But the Privy Council in considering the case held that when the tenure was hereditary the

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(1) 10 Cal. 684. (2) 10 W. R. 401.

(3) Lall Dharee Roy *v.* Brojo Lall Singh 10 W. R. 401.

(4) The Secretary of State *v.* Poran Sing, 5 Cal. 70.

(5) Raja Lelanund Singh *v.* The Government, 6 Moore 101, See 9 Cal. 206, 10 Cal. 685, See 10 W. R. 179, 14 W. R. 28.

(6) 15 Cal. 471.

(7) Mahbub Hossein *v.* Patasu Kumary, 10 W. R. 28.

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rule could not apply (1). These Ghatwali tenures are not life-tenures and are transferable by sale, mortgage or gift or in execution of decrees, if the Zemindar consents and accepts the transferee. (2) If the Zemindar does not make any objection for twelve years, he must be considered to have acquiesced in and consented to it and the courts should recognize it (3). This rule is now well-settled according to the custom governing these Ghatwalis, especially having regard to the fact "that the purpose for which the Kharagpore Ghatwalis were created no longer exists." (4)

They are dependent Taluks and cannot be annulled.

Khuruckpore Ghatwalis have been declared to be dependent Taluks and their rents can not be enhanced (5). They are protected under sec. 37 Act XI of 1859 and the purchaser of an entire Zemindary at a revenue sale can not annul a Ghatwali existing from before the Permanent Settlement (6).

Ghatwalis impartible governed by rule of primogeniture.

"A Ghatwali estate is impartible that is to say not subject to partition; and the eldest son succeeds to the whole to the exclusion of his brothers." (15 Cal. 480).

(1) Forbes *v.* Mir. Mahomed, Take 5 B. L. R. 540 P. C. 13 Moore, 438.

(2) 15 Cal. 471.

(3) Kali Pershad *v.* Anand Roy, 15 Cal. 471 P. C. Lelanund Singh *v.* Doorgabutty W. R. Sp. No. p. 249 Lalla Gooman Singh *v.* Grant 11 W. R. 292.

(4) Kali Pershad *v.* Anand Roy, 15 Cal. 471 P. C.

(5) Leelanund Singh *v.* Thakoor Manranjan, 3 Cal. 251.

(6) Kooldeep Narain *v.* The Government, 11 B. L. R. 71 P. C. confirming 6 W. R. 199.

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Ghatwalis though hereditary are however, considered as the exclusive property of the holder for the time being and not joint ancestral property in which the son has a right by birth and which is inalienable on account of the rules of the Mitakshara. Having regard to the origin and nature of Ghatwali tenures which might be held by a Hindu or a Mahomedan and to which the same rule must apply, the principles of Hindu, Mahomedan or any other system of the general law of inheritance can not apply to them (15 Cal. 480).

Not joint ancestral property nor governed by Mitakshara.

The above rules apply to Birbhum Ghatwalis as well as to other Ghatwalis and Digwaris generally (1).

Where Ghatwals of Birbhoom (and the same rule may be applied to other Ghatwals) granted permanent under-tenures to subordinate Ghatwals for Police duties, before the Permanent Settlement, and they continued till the present time as perpetual and hereditary tenures, they could not be set aside by the Ghatwals (2).

Shikmi Ghatwalis, their incidents.

Shikmi Ghatwalis are not transferable nor can they be seized in execution of a decree for debt (3).

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(1) Harlal Singh *v.* Jorawan Singh, 6 Select Rep. 204 Ed. 1873, approved in 6 Moore 125, 9 Cal. 205, 15 Cal. 471, Teetoo Koonwaree *v.* Surwan Singh S. D. A. 1853 p. 765 Surtuk Chander Dey *v.* Bhagtu Barut Chander Singh 5 D. A. 1853 p. 900.

(2) Mukurbhanoo Deo *v.* Kostoora Kunwari 5 W. R. 215.

(3) Bally Dabey *v.* Ganei Deo, 9 Cal. 388, See 10 Cal. 684.

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Ghatwalis of Bankura —their incidents.

Ghatwali tenures of the Bankura District have peculiar incidents. They were created by the old Kings of Vishnupore, who never acknowledged the overlordship of the Muhammadan sovereigns. We have the case of one of these tenures, which came before the Courts, which was created in 1525 A. D. and which has continued in the same family up to the present day. Under the Bankura system, there were Sirdar Ghatwals and *Talukdars* or. Shikmi Ghatwals under them: The service they had to render was both military and police. They pay a quit-rent to the Zemindar. But in regard to the services, they are now under the Government, which can dismiss or appoint them but on dismissal, the next male heir must be appointed. These tenures are permanent and hereditary and can not be resumed by the Government or the Zemindar on the ground that the services are no longer necessary or had been dispensed with. It has become one of the incidents of these tenures by usage that when the Ghatwal becomes incapable of personally performing the services, a deputy (preferably the next successor) may be appointed to act on his behalf by the Magistrate. The incapacity of the deputy to discharge adequately his duties does not operate as a forfeiture of the principal.

These Ghatwalis are inpartible and inalienable (1).

(1) 16 C. W. N. 487.

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Whether permanent and heritable.

In Hunter's Statistical Account of Bengal Vol. IV p. 254, it is stated that Ghatwali tenures of Bankura are neither hereditary nor transferable. But in Harington's Analysis of the Bengal Regul. Vol. III p. 510 the following passage occurs: "The Sirdar and inferior Ghatwal in the contiguous Zemindari of Bishenpur have small and specific portions of land in different villages assigned for the maintenance of themselves and of the *pikes* and *Chowkidars* under them, of a nature analogous to the *Chakran* assignments of land to village watchmen in other districts. That Ghatwali tenure however differs essentially from the common *Chakran* in two respects, *first*, that being expressly granted for purposes of Police at a low assessment, which has been allowed for in adjusting the revenue payable to the Government by the landholders at the formation of the permanent Settlement, the land is not liable to resumption nor the assessment to be raised beyond the established rate, at the discretion of the landholders; *secondly* that although the grant is not expressly hereditary, and the Ghatwal is removeable from his office and the lands attached to it for misconduct, it is the general usage on the death of a Ghatwal, who has faithfully executed the trust committed to him, to appoint his son, if competent, or some other fit person in his family to succeed to the office."

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Magistrate's power of dismissal and appointment

In an early case (1) the Calcutta High Court decided that a Ghatwali in Bankura was neither permanent nor heritable and on the authority of a letter of the Government dated 5th July 1806, held that the Magistrate could dismiss a Ghatwal for misconduct, neglect or insubordination, and that on dismissal the tenure is forfeited. The Judges however say that "as a general rule, the late incumbent's heir (on his death) if fit is appointed" but the Magistrate has the power of veto in respect of any candidate.

The Magistrates have been exercising the power of appointing and sometimes, but rarely of dismissing Ghatwalis. The rule of these Ghatwals as laid down in Harington's Analysis seems to be more consonant with ancient usage. The High Court in a recent case considered the decision mentioned above and questioned its correctness and in the case of an ancient Ghatwali existing from before the Permanent Settlement held that it was heritable and could not be resumed by the Government. It was found that there was a custom of appointing a Deputy to perform the duties, if a Ghatwal was incompetent. It was held that an order dismissing a deputy and appointing another Ghatwal by the Magistrate, did not affect the right of the

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(1) Secretary of State *v.* Poran Singh 5 Cal. 740

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former to succeed on the death of the original Ghatwal and he could obtain a declaration to that effect and possession through the Civil Court.

Digwaris of Bankura and Manbhum.

There are certain tenures in Bankura and Manbhum called Digwâri, which are thus described by the Privy Council: "Digwari tenure is similar to Ghatwali tenure. These were granted originally in consideration of the performance of military service, to which police duties were attached. The tenure is hereditary and inalienable. The Digwar is appointed by the Government and liable to be dismissed by the Government for misconduct. On dismissal, the next male heir, if fit for the office is appointed." (1)

Jagirs and Ghatwalis of Burdwan, Pachete and Midnapore.

There are certain Jaghirs of the Pachete Raj in the Districts of Burdwan and Manbhum, which are analogous to the Ghatwalis. They were granted on condition of military and police service before the Permanent Settlement after which their services continued to be due to the Government. The Zemindar was only entitled to the fixed rent reserved which was $\frac{2}{3}$rd of the annual value, one third being retained by the Jagirdar in lieu of services, which formed no part of the assets of the Zemindary in respect of which the Government revenue was fixed. The Jagir was hereditary but was not subject

(1) Raja Durga Prasad Singh *v.* Braja Nath Bose, 16 C. W. N. 487.

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ADVANCEMENT OF LEARNING
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to the ordinary rules of inheritance according to the Hindu or Mahomedan Law but was held upon condition of approval of the heir by the Government. The Digwaris, Ghatwalis and Jagirs of Burdwan, Bankura and Midnapore are impartible and not alienable and not liable to attachment and sale in execution of a decree for money or even for the rent of the tenure against the predecessor in estate of a Jagirdar (1).

It appears that in Bankura, Burdwan and Manbhoom, the Jagirdars and Ghatwals as a rule were under the Digwars and were bound to help them in Police or military duties (2).

As in the case of Digwaris, in Ghatwalis and Jagirs of Burdwan, Manbhoom, Bankura and Midnapore, the Government has exercised the right of appointment and dismissal. They have been all held to be hereditary and like all "chakran lands of Bengal always to go to the eldest son or to the nearest member of the family most capable of performing the duty" (3). The Magistrate however, is considered by some to have the power of veto. In any case the appointment is always made by the Magistrate and he can also dismiss in case of

Power of Government of appointment and dismissal

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(1) Nilmoney Sing Deo *v.* Bakranath Singh 9 Cal. 187 P. C.

(2) 9 Cal. 203 See 15 W. R. 38, 18 W. R. 376.

(3) Kustoora Kumari *v.* Monohur Deo W. R. 8p. No. p. 30 app. 9 Cal. p. 206 P. C.

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incompetency or disobedience or misconduct. (1) In an early case the High Court held that a person appointed by the Government was held as not entitled to possession as against the Raja of Pachete but the Privy Council disapproved of the decision (2).

Jurisdiction of Civil Courts.

It was held in an early case that the Civil Courts can not interfere to reinstate a Ghatwal, who has been dismissed by the police authorities in the lands, which he formerly held as Ghatwal (3).

In the most recent case on the question, in respect of a Digwari in Bankura, the High Court gave relief to the son of a Digwar on the ground that he had a right to be appointed in the place of his father for whom he had been appointed as deputy according to custom by the Magistrate and then dismissed (4). The Magistrates seldom go out of the established custom of appointing the eldest son or the nearest member of the family and of appointing a deputy in case of incompetence and rarely dismiss a Ghatwal. The question thus has come very rarely before the Courts.

In the case of Ghatwalis of Birbhum, it has been held that the Civil Court in such a

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(1) 9 Cal. 200.

(2) Udoy Chand Chakravarti *v.* Raja of Pachete (unreported) disapproved 9 Cal. 207 P. C.

(3) Debee Narain Singh *v.* Sree Kishen Seni I. W. R. 321.

(4) Jogendra Nath Singh *v.* Kali Charan Roy, 9 C. W. N. 663.

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case can give relief when the Commissioner acts beyond the scope of his authority (1).

Limitation for suits for declaration in case of wrong order of resumption.

In a recent case in Madras about Inams, where the Collector resumed a *Dasabandan Inam* granted for the upkeep of irrigation works, on account of the Inamdar's failure to fulfil the conditions of the Inam and the Inamdar brought a suit twelve years after, for a declaration that he was entitled to hold the land free of assessment, it has been held that no such declaration could be obtained without getting the Collector's order of resumption set aside and thus the limitation for such a suits is one year under Art 14, from the date of that order, which was vitiated only by irregularity and was not without jurisdiction. (2)

Resumption of Ghatwali and other service tenures.

Jagirs and Service tenures though originally life-grants when hereditary.

The question of resumption of service tenures, Ghatwali, Digwari, Jagir, Vatan, Inam or Chakeran is one of great importance and difficulty. All Jagirs during Muhammadan rule were for life. Sections 2 and 15 of Reg. 37 of 1793 declares that all Jagirs are to be considered as life-tenures, when there is no grant or when the grant itself does not expressly make it hereditary, according to the

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(1) Lall Dharee Roy v. Brajo Lal Singh 10 W. R. 401.

(2) Subbanana *v.* Secretary of State, 31 I. C. 267. Parbati Nath Dutt *v.* Rajmohun, 29 Cal. 367. Raghunath Prasad *v.* Kaniz Rasul, 24 All. 467. See however Hem Chandra *v.* Atul, 19 Cal. L. J 118.

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ancient usage of the country and by Section 12 all non-hereditary Jagirs are not transferable beyond the life-time of the grantee. We have already seen, notwithstanding the presumptions about life-grant in case of all service jagirs and other tenures, the Privy Council have laid down in cases about Ghatwalis, Jagirs, Vatans and Inams that even when there is no grant, if the tenures are ancient and have descended from generation to generation without objection, they are to be regarded as hereditary (1). But service tenures may be hereditary bût still resumable under some circumstances.

Principles governing resumption.

In the determination of the question whether a service tenure is resumable the distinctions mentioned below have been made.

A distinction has been made between a grant for services of a public nature and one of services private or personal to the grantor. The former has been held to be not resumable but the latter is considered as resumable (2).

Again a distinction has been made between grants made before and those made after the Permanent Settlement. It has also been held that in cases of grants to which services of a personal, as opposed to public character, are

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(1) 14 Moore 24, 29 Mad. 52, 15 Bomb. 222, 18 C. W. N. 420.

(2) Radha Pershad Sing *v.* Budhu Doshad. 22 Cal. 938. Lakhamgaoda *v.* Keshav 28 Bomb. 305, Mahadevi *v.* Vikrama 4 Mad. 365, Sanmyasi *v.* Salur 7 Mad 268.

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attached, the burden of proving that they are not resumable is on the grantees (1).

A grant may be unconditional, such as in consideration of past services, or conditional on future services. The former is not resumable (2). The quit-rent payable has been considered to be an element for the proper determination of the question (3).

A more important distinction is between a grant of land subject to a burden of service and a grant merely in lieu of wages. In the latter case the grantor has undoubted right to resume (4).

Right of Government to revenue Chowkidary Chakeran or other service Inam.

The Government has the right to resume under certain circumstances lands granted on condition of service of a public nature. But when the lands lie within the ambit of a Zamindary, whether as Chowkidary Chakeran or Inam for other services, the Government cannot resume or assess them with rent, without showing that "when the Zamindary was confirmed it was subject to reservations in respect of the lands which gave the Government the power of resuming and assessing it." (5). The Government has no right to resume when the services to be performed by an Inamdar are private or personal to the Zamindar who alone can resume them (6).

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(1) Vadiasapu *v.* Vyrecherla 72 I. C. 487. (2) Kamaravutu *v.* Raja of Pittapuram, 26 I. C. 1915, Dosebai *v* Ishardas 9 Bomb. 561 P. C. (3) Lakhamvada *v.* Keshava, 28 Bomb. 305. Bhagwat *v.* Sheo, 21 I. C. 485 (4) 29 Mad. 52 P. C. (5) Secretary of State *v.* Kirtibash Bhupati, 42 Cal. 710 P. C. Varadraja *v.* Gonepalli, 30 Mad. L. J. 545, 34 I. C. 627. (6) 30 Mad. L. J 545, Parthasarathy *v.* Secretary of State, 38 Mad. 620.

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Right of the Zamindar to resume.

It has been held (1) that "where lands are subject to the payment of a quit-rent and the performance of services, when it is shown that at the Permanent Settlement the lands comprised in the tenure were included in the *mal* lands of the Zamindari and were assessed upon the footing that the amount of revenue to be paid for them by the Zamindar was equal to the amount of rent payable to him by the holder of the tenure, the inference to be drawn is that is that the tenure was a permanent one descendible to heirs, the holders whereof would continue bound to perform the services."

Ghatwali's and hereditary service tenures not resumable when service not refused.

A Ghatwali or other hereditary service tenure existing from before the Permanent Settlement, which is hereditary and held upon payment of a quit-rent "can not be determined or resumed by the Zamindar or by the Government on the ground that the services are no longer required, so long as the holders of these grants are willing and able to perform the services" (2).

Grants in lieu of wages resumable.

Where a grant of land is merely in lieu of wages, it is resumable but where it is subject to a burden of service and is not merely in lieu of wages, the grantor has no right to resume. When a village had been granted at a yearly quit-rent, before the British Raj, on condition

(1) Kooldeep Narain *v.* Government, 6 W. R. 199 F. B. Affirmed 14 Moore 247. See 9 C. W. N. 667. Leelanand Singh *v.* Monorunjan, L. R. I. A. Supt. Vol. 187, 3 Cal. 251.

(2) Forbes *v.* Meer Mahomed 10 Moore 488, Kooldeep *v.* Government 14 Moore 247, Jogendra *v.* Kali 9 C. W. N. 669.

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of service, when the services were rendered intermittently and *batta* was paid to the grantees when on actual duty, when the rent had not varied and there had been no interference with the devolution of the property from heir to heir, the Privy Council held that the Zamindar was not entitled to dispense with the services and resume the village at his option (1).

Not resumable at option when on condition of service.

The following principles were recently laid down by the Calcutta High Court: Where the grant was made, as a reward for past services, such as reclamation of land, the grantor would have to prove that merely because performance of some future service was annexed to the grant, non-performance thereof entitles him to treat the tenure as forfeited. When the original service was Ghatwali, the grantor would have to establish that when such service became unnecessary by reason of the action of the State, he was entitled in lieu thereof to claim the performance some other kind of service. Even where the grantor can claim the performance of service, he has to establish that where a tenure is held on condition of payment of rent in cash and performance of some service, he is entitled to treat the tenure as forfeited, because performance of service has been refused though the cash rent has been tendered (2).

Principles recently laid down at Calcutta.

Resumption when services unnecessary.

It was also laid down in the above case that

(1) Vencata Narasinha *v.* Sobhanadari 22 Mad. 52 P. C. Kamarvuta *v.* Raja of Pittapuram 26 I. C. 1915. (2) Bhagwat Buksh Roy *v.* Sheo Pershad Sahee 18 C. W. N. 299 21 I. C. 481.

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Right to refuse service by lapse to time.

When character of service tenure lost inalinability ceases.

where services had been refused for a period of 12 years, "the grantee acquires by lapse of time a right to refuse service to the grantor." In such a case it was further observed that "the view may well be maintained that as the tenure had lost its character of service tenure, the fetter of inalienability had been removed."

Acquisition of right of permanence and alienability by adverse assertion.

It was also held case that where a claim to hold a tenure as a permanent, heritable and transferable tenure not subject to service had been made adversely to the landlord twelve years before and the possession of the tenure under this adverse claim had been sufficient in publicity, continuity and extent to admit of the application of the law of limitation, the holder acquired the right claimed by lapse of time (1).

Section VI.

Tarawads of Madras and the Customs of the Illuvans and Tiyars.

The constitution of a Madras Tarawad has thus been described in a learned treatise on the subject (2).

Description of Tarawads.

"The most astounding feature in the constitution of a Malabar Nair Tarawad is that the system of kinship which obtains is one in which fathers are practically ignored and descent is reckoned through mothers. The

(1) 18 C. W. N. 299. See also Thakore Fatesingi *v.* Bamanjee, 27 Bomb. 515, Sheshamma *v.* Chikaya 26 Mad. 507, Parameshwaram *v.* Krishnen 26 Mad. 535 Ishan Chandra *v.* Ram Ranjan 2 Cal. L. J. 125.

(2) Mr. Pillay's Alia Santana Law.

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Civil Law of the land takes cognisance only of relations on the female side. The constitutions of the Tarawad or family of people living together is exceedingly complex. A mother and all her children, both male and female, all her grand-children by her daughters, all her brothers and sisters and the descendants on the sister's side, in short all the woman's relatives on the female side, however, distant their relationship, live together in the same block of buildings, have a common table, enjoy all her property and share it after her death in common with one another. There are, at present, instances in the country of such Tarawads with about two hundred members belonging to different branches and separated from one another by generations of descent yet all able to trace their descent from one common ancestress. When, by the constant addition of members to a Tarawad, it becomes too unwieldy to be governed and managed by one man, natural forces begin to work and bring about a division of it into various distinct Tarawads which keep up the original traditions of their common descent but have no legal right to the property of one another. These partitions are often so arranged as to bring into separate Tarawads closely related members who before belonged to one branch of the original constitution and the kindred sympathies of the members are thus placed on a better and stronger basis of relationship. Over the whole

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of this group of members living in one Tarawad the eldest male is by legal right appointed *Karanavan* or managing head; and on his death the next senior male member, to whatever branch of the family he may belong, succeeds to that office in preference to all others. Thus the joint property of the whole Tarawad is kept under the control and management of the *Karanavan* who is legally responsible for its safe-keeping as well as for the education of its junior members and for all the necessities arising from its social status.

Marumakka-thayam.

The Law by which succession is regulated in these Tarawads is called the Marumakka-thayam law (succession by nephews). The name Marumakkathayam is somewhat misleading since it might suggest that the family succession is restricted to nephews alone; whereas, a brother or any other kinsman on the female side who happens to be the eldest male member at the time of the death of a *Karanavan* succeeds to the headship to the exclusion of nephews. The spirit of the law governing these Tarawads is that while the joint property belongs to the females, their natural incapacity for family government has made the eldest male member the life-trustee of the joint estate. These trustees are entitled only to maintenance out of the joint property; and must in no way alienate their trust properties without the express or tacit consent of all the members of the Tarawad; unauthorized

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alienation of such properties or acts of mismanagement on the part of a *Karanavan* being legally sufficient cause for his removal from managership and for the substitution in his stead of some one in whom the family have full confidence.

Karanavans whether they can have separate property.

The general presumption in law is that these Karanavans have no private property of their own: anything that they might happen to possess being generally presumed to have been earned out of the incomes of the joint estates which are at the time under their management. But in case of a legal dispute if a Karanavan proves to the satisfaction of a Court of law that certain property is his own acquisition, such property is invariably declared his private earning. The junior members both male and female are allowed the free right of making acquisitions for themselves and these they are at absolute liberty to dispose of in any way they like during their life-time. But the private acquisitions of every member, male or female, who dies intestate lapse to the joint property and thus become common property of the Tarawad. But of late years there has been a tendency shown by Courts to declare such property to lapse to the nearest line in preference to the joint property.

Impartibility of Tarawads and other incidents

The joint property thus held is impartible, except with the unanimous consent of all the members, an expression of disagreement by any

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one single adult member, male or female, being fully sufficient for breaking off a partition arrangement. In partitions, the joint property, both moveable and immoveable, is divided in equal shares; but the Karanavan for the time being has a conventional right to a double share. Should a Karanavan by reason of his distant relationship to some particular branch of the family or through preference for his own immediate branch deprive the former of the benefits that are derivable from their legal claim to the joint property, such a branch has the privilege of suing him for maintenance and getting a decree for the same against him.

With regard to the question of succession another thing to be noticed is that in the absence of any male member to succeed to the office of Karanavan, the eldest female takes precedence of all others; and when a Tarawad becomes extinct on the death of the last surviving member, the property is claimed by the reversioners of the Tarawad or in the absence of even such heirs escheated to Government."*

The Illuvans and Tiyans of Palaghat originally formed one class. But in course of time separate customs have come to prevail among them. It has been held that the custom of impartibility prevails among the Tiyans among whom compulsory partition can not be

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* Malabar Law p.

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effected at the will of one member according to the Makkatayam Law (1) but no such custom has been proved to exist among the Illuvans. (2)

The following are some of the rules laid down in a recent Full Bench decision and other cases :

A Malabar Tarwad is ordinarily impartible but it can be partitionel only with the consent of all the members. One single member can not demand or sue for partition. (3)

The adult members can partition the Tarwad property or make a *karar* or arrangement in respect of them. Such a partition or arrangement would ordinarily be binding on the minors, but if on attaining majority, they are able to show fhat they have been prejudiced, the partition could be reopened or the arrangement set aside, so far as they are concerned, and they would be awarded the share which would be awarded for them but subject to this, the partition or the arrangement is binding as between the parties to it. (4)

A decree obtained against Karnarvan of a Malabar Tarwad binds all the Andravans or the junior members of the family, in the absence of fraud or collusion. (5)

The Andravans are entitled to maintenance but can not claim an account from the Kar-

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(1) Raman Menon *v.* Chathunni, 17 Mad . 184 (2) Velu *v.*- Chammu, 22 Mad. 297. (3) Puzhakkal *v.* Puzhakkal, 34 I. C. 818. (4) Kenath Puthen *v.* Narayanam, 28 Mad. 182 F. B. Puzhakkal *v.* Puzhakkal, 34 I. C. 818. (5) Vasudevau *v.* Sankaran, 20 Mad. 129 F. B.

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narvan. (1) But though they are not ordinarily entitled to separate maintenance, under special circumstances, they can claim it. (2)

It has been held that a Karnarvan can be removed by a suit for gross mismanagement, neglect and misconduct at the instance of other members, including minor members. (3)

Tarwad property is not assets for the realization of the debts of a deceased Karnarvan in the hands of his successor. (4)

The Karnarvan has full power to manage the property but can not alienate, it except with the consent of all the members.

An alienation to be binding must be signed by the Karnarvan and the senior Andravan. The assent of the members can be presumed when the alienation is for the benefit of the family. (5)

Junior members, including minors, have the right to question alienations or acts of mismanagement by the Karnarvan in order to preserve the integrity of the family property. (6)

Blindness and insanity have been declared disqualifications for being a Karnarvan. (7)

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(1) Kunigaratu *v.* Arangaden, 2 Mad. H. C. 12, Sec. 5 Mad. 71, 15 Mad. W. R. 305, 9 Mad. L. J. 1531, 4 Mad. 171. (2) Makhi *v.* Keloth, 16 Mad. L. J. 273, see 4 Mad. 169, 12 Mad. 498. (3) Parvati *v.* Ramchandra, 7 Mad. L. J. 273, sec. 29 Mad. 322, 16 Mad. 201, 1 Mad. 153, 20 Mad. 5, 129, Puzhakkal *v.* Puzzhkkal 34 I. C. 818. (4) Ravi *v.* Roman, 5 Mad. 223. (5) Kondi Menon *v.* Srangenragatta, 1 Mad. H. C. 246. Sec 9 Mad. 266 Kalliyani *v.* Narayana, 9 Mad. 266. (6) Puzhakkal *v.* Puzhakkal, 34 I. C. 818 (7) Urrandan *v.* Kunhunni, 15 Mad. 483, Kanaran *v.* Kinyan, 12 Mad. 307, Sanku *v.* Puttama, 14 Mad. 289.

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LECTURE IV.

Impartible Zemindaries and Tenures—Succession.

Early history of kingship and its devolution.

Several theories have been propounded by learned scholars about the origin of kingship and about its devolution in early times. Very learned men have however, a predilection for magnifying facts discovered by them by laborious study as the root of all possible institutions. The theory of village communities of Sir Henry Maine* and the recent theory of Dr. Frazer about early kings being magicians, who owed their office to magic, are instances in point. Sir Henry Maine was of opinion that the early king was also the priest. Dr. Frazer has supposed that the King of the Wood of Nemi was the origin of the Roman king and that his magical instruments were the origin of the regalia of a king.† He has supported his theory from contemporary customs of Polynesia and Africa. These great scholars, Sir Henry Maine and Dr. Frazer, on account of their ignorance of Sanskrit and the ancient literature of Asia, took all their theories from studies in Roman and Greek literature and the accounts of modern travellers. So far as the Aryan races are concerned, we have

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* See pages 27-30,

† Lectures on the early history of Kingship by I. G. Frazer, D.C.L., (1905) p. 9.

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authentic history of their customs recorded in the Vedas, which takes us back at least to 3000 years before Christ. There is not much room for speculation. Thanks to the patient scholarship of Max Müller and other European scholars, we know with tolerable certainty the history of a great many of the institutions among Aryan nations. That magic was much in vogue among the ancient Aryan races is clear from the Atharva Veda. The Atharvan or the powerful magician priest was however, never the king. Angiras and Vasista were priests and protectors of kings. We have no indication that the king was ever a priest or a magician. One thing is certain that before the Aryans parted company with one another, before the Persians went to Persia and the Indian Aryans crossed the Himalayas, the king could never belong to the priestly caste. If the Vedic King Pururaba was the lover of the nymph Urvasi or if the Roman king Numa had Egeria for his mistress and dabbled in religious practices, such legends do not prove that the King was a magician or a priest. The theory that the kingly office was impartible, because it was the office of a magician or a priest, is too grotesque to require refutation. The office was considered sacred but that is no reason that it had its origin in priestcraft or magic. The earliest record of human institutions mentions the consecration of the king.

Whether the early king was a priest.

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It was supposed that on this consecration the gods endowed the king partly with their powers. Surprising as it may appear, with the exception of Manu, who is supposed to be a son of the Sun, there is no mention of a king of divine pedigree in the Rig Veda. The greatest kings mentioned there, such as Sudasha, are never described as of divine origin. It is only in the Puranas that we find pedigrees of the kingly houses traced with great definiteness from the sun or the moon and latterly, on the extinction of the solar and the lunar lines, to Agni. Homer's chief kings are Jove-descended and his chief heroes god or goddess-born. Priests and bards had then invented pedigrees for their kings and heroes. The defication of mortal man is not a very ancient custom. It is the outcome of the servility of priests and bards and of the exaggerated flattery of courtiers in luxurious times, when kings surrounded themselves with extraordinary pomp and circumstance. Those terms of exaggerated flattery are considered even in the twentieth century as proper official language. There is one circumstance which has been mentioned in connection with the office of the king as showing his character of the magic healer. The touch of the king of England was supposed to cure scrofula. Some kings of Polynesia, it is believed, can bring down rain. I am not concerned with the kings of Africa or of the head-hunters of the

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Pacific islands. But the alleged healing power of a European king is a curious circumstance. There is no indication anywhere that such power was ascribed to any other king of Aryan origin, Hindu or Persian, Greek or Roman. Probably the English king owed his reputation of this power to his being the descendant of Edward the Confessor, who became a saint of the Roman church. In India, we have however, a strange belief that the king is responsible for the welfare of his subjects. Famine and plague, want of rain and inundation are all ascribed to the unjust character of the reign of a king. The stories of extraordinarily just kings, like Rama, and the prosperity of their reigns and their description in the great epics as illustrating the power of justice were instrumental in creating the expectation in the popular mind of having like prosperity under every king and ascribing all misfortunes to the unrighteousness of the king.

The evolution of the office of the king has been described in my introductory lecture. I have not indulged in any speculation, except the speculation from the common words of the Aryan races, which contain in them the most authentic history. The facts on which my conclusions are based are facts of history of which there is no doubt. I have thought it necessary to refute certain theories of learned men about kingship and impartibility of

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kingdoms, because they go against incontrovertible facts and because, if correct, they would show that the principles of succession to impartible property, according to the Smritis and the Puranas, are without any foundation in history. I also consider it waste of time to discuss the theories of those scholars about succession on the female side in preference to the male, in ancient times, as there is absolutely no room for them in the institutions of the Aryan races, as I have shown in my book on the Principles of Hindu Law.

We have already seen how the office of the king was evolved among the nomadic Aryan tribes. It is true, as Tacitus says of the Germans, that the familæ, and the propinquitates fought together in battle under their own leaders and it is also true, as Schrader says, that during their migrations there was a leader of the tribes. A flood of light is thrown on the matter by the history of the Rajputs. Owing to the labours of that great scholar and lover of India, Colonel Tod, we know with tolerable accuracy the history of the rise and growth of the modern Rajput States. It appears that in every case the State was formed by the male children of one man and his dependants. The numerous progeny of Bappa formed the Rajputs of Mewar. The sons of every Raja had large fiefs granted to them on condition of military service and they in their turn became chiefs and parcelled out

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their grants among their sons, who were called after them, such as the Saktawats. The eldest became the Raja in the case of the Raj and the Sirdar in the case of the fief. Unlike the feudal lords of Europe, the Sirdars of a Rajput kingdom almost all belonged to one family, that is, of the king. The kingdom of Mewar is thus the kingdom of the Sesodias. The kingdom of Jodhpore is the kingdom of the sons of Jodha the founder, who were so numerous that one hundred thousand of them were always at the disposal of their chief. There were some feudal chiefs of other families also, who received fiefs from the King. This is the pure Aryan system. We can now understand how the ancient Panchalas, the Kashis, the Ikshakus, the Kurus and the Yadus were formed. We now see how Kshatriyas and Rajanyas were synonymous terms. They were all princes, who fought the aboriginal tribes and kept them in subjection. It is said that the Rajputs were Aryans but late arrivals in India, being of Scythian origin. If that if so, the customs of the Rajputs show the original customs of all Aryan nations and of those tribes that first came to India. In the very nature of their constitution, the rule of male succession and that of primogeniture governed the early Aryan invaders, as they do the present Rajput chiefs. This explains the rule of the eldest succeeding and the inalienability of land outside the family, which

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we find prescribed by the most ancient law-givers. In course of time, when the non-fighting castes of Brahmans and Vaisyas were evolved and when the great subdivision of land made the Kshatriyas small allodial proprietors, such as are still found among the more ancient Rajputs settlers of the Rajput States, the rule of primogeniture fell into disuse and equal division became the law of the Hindus, except in the case of principalities, feudal tenures and offices of State.

Impartibility not an original incident of kingdoms.

But it must not be supposed that impartibility was an original incident of kingdoms. The headship of the tribe or clan ordinarily went to the eldest son, but it sometimes went to a worthier younger son, as Narada says, and as we find mentioned in the Ramayana, showing that at some remote time the office went by election. But as to the land, we find it mentioned in the Puranas that kings very often divided their kingdoms among their sons. We have seen how in Europe impartibility became the rule only in the 11th century. It is only when the idea of the divine right of kings got firm hold of the mind of the people that impartibility became the rule. The anointment of Saul by Samuel showed the antiquity of the idea of the divine character of the office of the king among Jews. With the introduction of Christianity the anointment of kings was introduced by the priests, who got their idea from the Hebrew scriptures. In India, it appears that

Divine character of kingship.

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the idea was introduced by the priests first in the case of a great conquering emperor, who ruled from sea to sea. He was considered too great to be a mere man. He was supposed to be formed of the essence of the gods. As symbolical of his power he was bathed in the waters of the seven seas and of all the great rivers of India, and the conquered kings had to pay homage on the occasion. The ceremony, which was regarded as a religious one and was accompanied with great pomp and circumstance, was called Abhisekha. This ceremony, which was only appropriate to a world-emperor came to be performed by all minor kings in imitation of them. The emperors were great gods and the minor chiefs became little gods. We do not find in the Rig Veda any indication of the divine right of kings. But in the Yajur Veda, the idea is inculcated. This is one proof of the great distance of time between the compositions of these two principal Vedas. The Yajur Veda was composed at a time when there were great *Chakravarti* emperors with numerous dependent kings in India. Now, when the idea of the divine character of the king's office was firmly established, the theories, which we find enunciated in the Mimansa, came into existence, namely, that the king had no right in the soil and that kingdoms were inalienable. The practice of dividing kingdoms among sons fell into disuse. But the right of younger sons to receive a

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portion of the kingdom in fief was acknowledged and this custom, the operation of which can be traced in the existing Rajput States, is the foundation of the system by which a prince could command a hundred thousand horsemen, "all sons of the same father," all sons of kings, all Rajanyas. We find in the Ramayana, Janaka recognising the obligation of establishing a younger brother in a kingdom. Rama established all his younger brothers in separate kingdoms but all these are mentioned to be newly conquered kingdoms. With all the idea of the sacred character of the king and the imparti-bility of kingdoms, we find however, Rama, the greatest examplar of all Indian emperors, dividing his ancestral kingdom of Kosala between his two sons, Lava and Kusa, which from that time became divided into Northern and Southern Kosalas.

Rules of the Smritis.

The Smritis speak of the rules of inheritance. According to them, all property with certain specified exceptions is governed by the rule of equal division among sons. Kingdoms are-governed by well established Kulachara, as is mentioned in the Ramayana.* Nevertheless

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* इक्ष्वाकूणां हि सर्व्वेषां राजा भवति पूर्व्वजः।

* * *

स राघवाणां कुलधर्म्ममात्मनः।

सनातनं नाद्य विहन्तुमर्हसि।

Among all Ikshakus the eldest becomes the king. * * Do not this day destroy the ancient family *dharma* (custom) of the Raghavas.

Ramayana, Ayodhya Kanda, 110 Ch. 37.

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the disqualifications, which exclude from inheritance according to the Smritis, have always been considered applicable to Rajes. The great war of Bharata was the outcome of the application of the rule that a blind elder brother should not succeed to a kingdom. Duryodhana, the son of the blind Dhritarastra contested the justice of the rule* and considered himself qualified to succeed to the headship of the Kurus. His claim was admitted by a very large number of Kshatriyas and Brahmanas and were it not for the superior statesmanship of Krishna and the superhuman prowess of Arjuna, the rule of the exclusion of the blind and his sons would have

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* पित्रत: प्राप्तवान् राज्यं पाण्डुरात्मगुणात् पुरा ।
त्वमस्वगुणरूंयोगात् प्राप्तं राज्यं न लब्धवान् ॥
स एष पाण्डोर्दायादं यदि प्राप्नोति पाण्डव: ।
तस्य पुत्रोध्रुवं प्राप्तस्तस्य तस्यापि चापर: ॥
ते वयं राजवंशेन हीना: सह सुतैरपि ।
अवज्ञाता भविष्यामो लोकस्य जगतीपते ।
सततं निरयं प्राप्ता परपिण्डोपजीविन: ॥
यदि त्वं पुरा राजन्निदं राज्यमवाप्तवान ।
ध्रुवं प्राप्ताम च वयं राज्यमप्यवशे जने ॥

Pandu obtained the kingdom descending from his father through his own virtues. You (Dhritarashtra) did not get the kingdom which had descended to you, because of the disqualification of blindness. If Pandu's son now obtains the kingdom as Pandu's inheritance, his son, son's son and other descendants will also certainly get it. O, king of the world! ourselves with our children excluded from the royal line shall certainly be disregarded of all men. Therefore adopt such policy that we may not, being dependents for our food on others, be distressed as if in hell. If the kingdom descended to you before, certainly we shall get it, though the people may be against us.

Mahabharata, Adi Parva, 143 Ch. 34-38.

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been washed away in the deluge of blood which flooded the field of Kurukshetra. The Kulachara of the Rajput States has laid down, says Colonel Tod, that not only the blind but also the one-eyed should be excluded from a Raj. There is however, no justification in Hindu Law for this latter rule.

We do not know whether the son of a pre-deceased eldest son succeeds. We have no such instance either in the Haribansa or the Bhagabata or the Raj Tarangini. But Colonel Tod gives instances in which the son of the pre-deceased eldest son succeeded in pfeference to sons.

Rules of succession according to Puranas and Niti Shastras.

The rules governing kings and kingdoms are supposed to be found in the Nitishastras. They were supposed to be very volumnious books, especially those by Vrishapati and Sukra. But unfortunately we know them only by name from the Mahabharata* and other books. We have only got a book on Niti

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* बृहस्पतिर्हि भगवान् नान्यं धर्म्मं प्रशंसति ।
विशालाक्षश्च भगवान् काव्यश्चैव महातपाः ।
सहस्राक्षो महेन्द्रश्च तथा प्राचेतसो मनुः ।
भारद्वाजश्च भगवान् तथा गौरशिरा मुनिः ।
राजशास्त्रप्रणेतारो ब्रह्मण्या ब्रह्मवादिनः ।

Vrihaspati does not praise any other Dharma (than the Dharma of kings) Visalaksha, Sukra the thousand-eyed Indra, the Pracheta Manu, Bharadwaja and Gourashira, these possessing Brahmajnana have written books on Rajshastra or the law about kings.

Mahabharata, Santi Parva, Ch. 58, v. 13.

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by Kamandaki, written about the time of Chandra Gupta by a disciple of Chanakya or Vishnu Gupta the Machiævel of India, who himself also had written a book on Niti,* and another small book supposed to be based on Sukra's great book, called Sukra Niti.

We get the following rules laid down in the Puranas and the Niti Shastras.

1. The eldest son alone takes a Raj. (1)
2. A blind son does not succeed. (2)
3. Patita or outcaste son does not succeed. (3)

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* ब्रह्माऽध्यायसहस्राणां शतं चक्रे स्वबुद्धिजम् ।
तस्मारदेन शक्रेण गुरुणा भार्गवेण च ॥
भारद्वाजविशालाक्षभीष्मपाराशरैस्तथा ।
संक्षिप्तमनुना चैव तथा चान्यैर्महर्षिभिः ॥
प्रजानामायुषो ह्रासं विज्ञाय च महात्मना ।
संक्षिप्तं विष्णुगुप्तेन नृपानामर्थसिद्धये ॥

Kamandake Niti Shastra.

(1) सर्वैकनायकं राज्यं कुर्य्यान्न बहुनायकम् ।

Sukra Niti, 1 Ch., 343.

न हि राज्ञः सुताः सर्व्वे राज्ये तिष्ठन्ति भामिनि ।
स्थाप्यमानेषु सर्व्वेषु सुमहाननयो भवेत् ॥
तस्माज्ज्येष्ठे हि कैकेयि राजयतन्त्राणि पार्थिवाः ।
स्थापयन्त्यनवद्याङ्गि गुणवत्स्वितरेष्वपि ॥

Ramayana, Ayodhya Kanda, 8 Ch., 23, 24.

(2) नान्धो राज्याधिकारी स्यात्

Debi Bhagabat purana, 6th Skandha, 25 Ch. 4

(3) तत एवाशेषराष्ट्रविनाशमवेक्ष्यासौराजा ब्राह्मणानपृच्छत् भोः कस्मादस्मिन् राष्ट्रे देवो न वर्षति कोयमपराध इति । ते तमूचुः । अग्रजस्य त्वेह यमवनिरक्षया भुज्यते परिवेत्ता त्वमित्युक्तः स पुनस्तानपृच्छत् किं मया

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4. A person who is deaf or is a leper or is mute, blind or impotent, does not succeed to a Raj, but his brother or son may. (4)

5. The following persons should be installed in the position of Yuvaraja by the king : the legitimate son, the younger brother, the uncle, the son of the elder brother, and the Dattaka son, in order ; failing these, a beloved daughter's son. (5)

6. The king should give his agnates means of enjoyment of life, like what he himself possesses. The kingdom should never be divided. But the brothers may be established as

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विधेयमिति ते तमूचुः। यावद्देवापिर्न पतनादिदोषैरभिभूयते तावत्तस्याहं राज्यं तदलमेतेन तस्मै दीयतामित्युक्तं तस्य मन्त्रिप्रवरेणाप्तसारिना तवारण्ये तपस्विनो वेदवादविरोधवक्तारः प्रयोजिताः।

(Devapi the elder brother having gone to the forest, Santanu became king.) Thereupon there was a great draught and famine. The Brahmins being asked the cause said that as long as Devapi is not disqualified by defects like Patitya, the kingdom is his and because he has been superseded there has been this famine. Devapi was sent for &c.

Vishnu Purana Part 4 ch. 20 v. 7.

(4) ज्येष्ठोऽपि बधिरः कुष्ठी मूकोऽन्धःषण्ड एव यः।
सराज्यार्हो भवेन्नैव भ्रातातत्पुत्र एवहि॥

If the eldest son is deaf, a leper, or dumb, blind or impotent, he does not deserve the Raj but the brother or his son will succeed him.

Sukra Niti ch. 2.

(5) कस्य येद्युवराजार्थमौरसं धर्म्मपत्नीजम्।
स्वकनिष्ठं पितृव्यं वानुजं वाग्रजसम्भवम्।
पुत्रं पुत्रोक्तं दत्तं यौवराज्येऽभिषिचयेत्।
क्रमादभाव दौहित्रं सप्रिय वा नियोजयत्।

Sukra Niti ch. 2 v. 14-16.

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feudal lords by giving to them a fourth of the kingdom. (1)

7. When there is natural born legitimate son, the adopted, the Kshetraja son and other sons cannot take the Raj. (2)

8. When there are no male members, daughters may take. (3)

9. Vicious eldest sons might be superseded. (4)

Rules of succession according to decisions.

Let us now go to the ordinary principles which govern the rule of succession to impartible property, as recognized by our courts. That the rule of primogeniture applies to such estates is admitted on all hands. The Privy

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(1) अतः स्वभोगसदृशान् दायादान् कारयेन्नृपः ।
अव्याहताज्ञः सन्तुष्टश्चक्रवर्त्तिसिंहासनैरपि ॥
राज्यविभजनाक्रे योन भूपानां भवेत् खलु ।
अङ्गीकृतं विभागेन राज्यं शत्रुर्जिघृक्षति ।
राज्यतुर्य्यांशदानेन स्थापयेत्तान् समन्ततः ।
चतुर्दिक्षु थवा देशाधिपान् कुर्य्यात् सदानृपः ॥

Sukra Niti 2, Ch. 346, 347, 137.

(2) क्षेत्रजादौंस्तनयान् न राजा राज्येऽभिषिचयेत् ।
पितृणां कारयेन्नित्यमौरसे तनये सति ॥

Kalika Purana cited in the Dattaka Mimansa.

(3) तेषां राष्ट्राणित्वगष्ट्रा राजन् सुहृदृतः ।
भ्रातॄन् पुत्रांश्च पौत्रांश्च स्वे स्वे राज्येऽभिषेचय ॥
कुमारो नास्ति कन्यानत्वाभिषेचय ।

Mahabharata Santi Parva Ch. 33 V. 43, 45.

(4) There are certain instances mentioned in the Puranas of vicious eldest sons having been superseded but no rule, is to be found in them.

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Council have laid down that "if there is nothing to guide the mind to any other conclusion an impartible estate will descend according to the law of primogeniture" (1). But it is a matter of difficulty in many cases to ascertain whether the rule of lineal primogeniture or of primogeniture by proximity applies.

Lineal or representative primogeniture and primogeniture of proximity.

The rule of lineal primogeniture is also called the rule of representative primogeniture, as distinguished from the rule of primogeniture of proximity according to which the person nearest in blood takes.

History of the rule of primogeniture.

There are strong grounds for holding that the rule of primogeniture was based upon the military advantages that accrued to the State and the family in ancient times. As regards fiefs and military tenures, Bracton was probably right when he laid down that the rule was based on the principle that "the right of the sword suffers no division." From this it follows that in ancient times the command of the clan would go to a man capable of exercising it and the eldest living son would take and not the minor son of a predeceased elder son.(2) It is possible therefore that the rule of lineal or representative primogeniture did not prevail in very ancient times.

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(1) Thakoor Isri Sing *v.* Baldeo Sing, 11 I. A. 145. Sree Achalram *v.* Udaypratap, 11 I. A. 51.

(2) Glanville, VII 3, Bracton 64b.

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Even in Henry II.'s time, in England it was "magna juris dubitato," whether a fief would descend according to the rule of lineal primogeniture or of primogeniture by proximity.*

Evolution of the rule of representative primogeniture.

In more settled times and when juristic ideas and legal principles came to be enunciated and followed, the right of representation was established as a necessary logical consequence. The principle of representation came to be recognised in France, while it was still regarded as doubtful in England. John could get himself recognized king in England in preference to his nephew Arthur but not in Normandy. But ultimately the continental rule came to be established in England also. In Glanville's time it was a doubtful point, but Bracton lays it down as settled law that the descendant always represents the ancestor in his rights of inheritance.†

Mr. Mayne in his valuable book on Hindu Law expresses the following opinion on the subject.

Lineal primogeniture how far prevalent.

"Property which is in its nature impartible, as a Raj or ancient Zemindary, can, of

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* There was a time when in Europe the lord had the right of selecting the son who should succeed to a vassal's tenancy. The practice very soon fell into disuse. As regards female heirs, Henry III. seems to have rejected in practice their claim but when later law recognized their right, it recognized also the right of the Crown to chose any one of the daughters to be the peeress, though the lands descended to all as coparceners.

† See History of the Law of Primogeniture by Kenny, p. 25.

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course, only descend to one of the issue; which that one is to be will depend upon the custom of the family. In general, such estates descend by the law of primogeniture.* In that case the eldest son is the son who was born first, not the first-born son of a senior. or even of the first married wife (Manu, IX. § 125, 126). So long as the line of the eldest son continued in possession, the estate would pass in that line.† That is to say, on the death of an eldest son, leaving sons, it would pass to his eldest son and not his brother. But there is a singular want of authority as to the rule to be adopted where an eldest son, who has never taken the estate, has died, leaving younger brothers, and also sons. The point has been twice argued very lately before the Privy Council, but in neither case was it necessary to decide the question. The only cases that I am aware of in which the point was actually decided, were in Madras. The earlier cases arose in the same family, as will appear from the following pedigree. It only shows so much of the relationship as will render the litigation intelligible.

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* This presumption of course may be displaced by evidence showing that some other rule prevailed such as selection of the successor. Ishri Singh *v.* Baldeo Singh, 11 I. A. 135. See also Achal Ram *v.* Udai Pertab. 11 I. A. 51.

† See pedigree in Yenumula *v.* Ramandora, 6 Mad. H. C. 93; Narganti *v.* Venkatachelapati, 4 Mad. 250.

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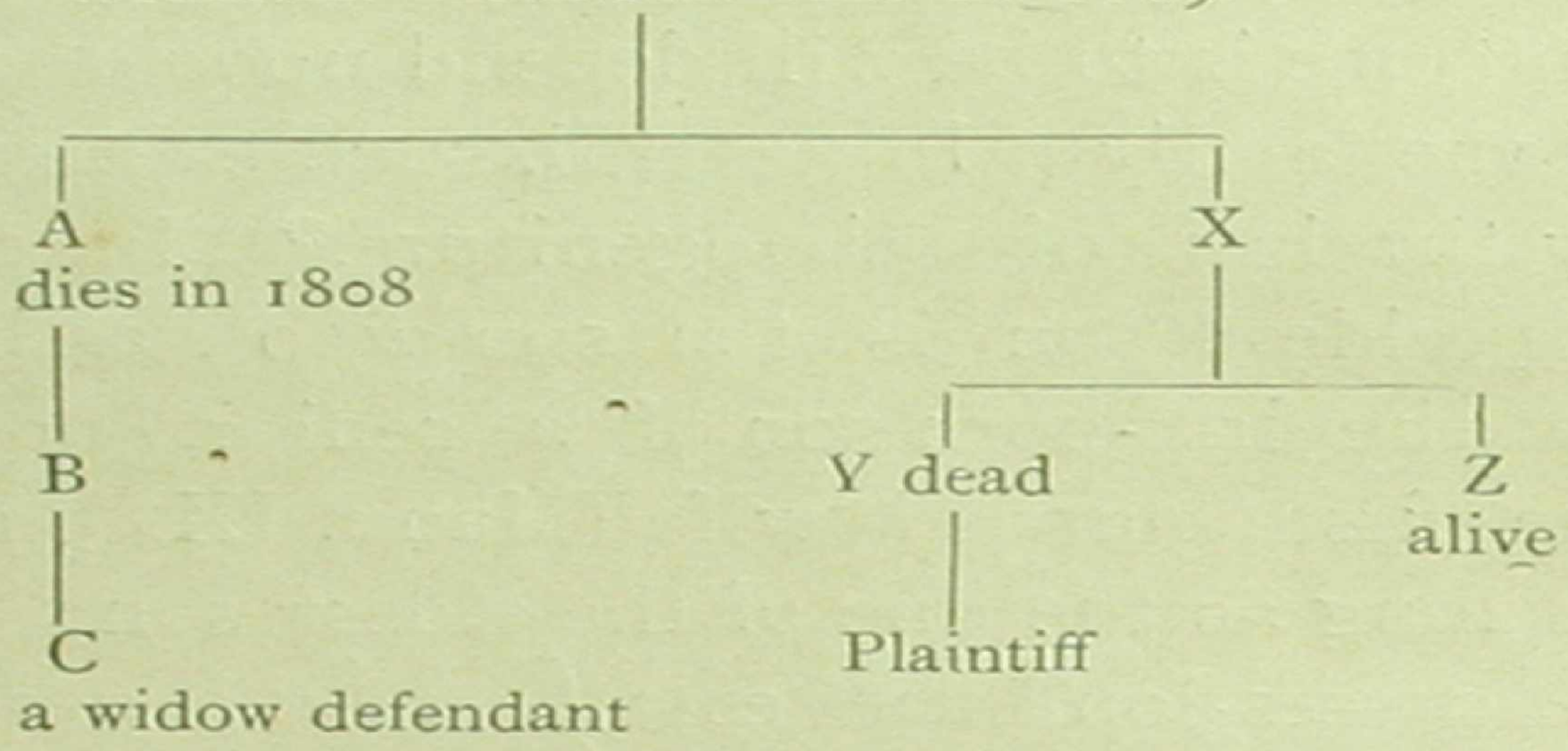
ISTIMRAR ZEMINDAR DIES IN 1809.



Here it will be seen that at the death of, the Zemindar he left a grandson B, by an elder son, and a younger son X. The latter got possession of the Zemindary, but B brought a suit against him, and ultimately recovered possessions. There were circumstances in the case which might have justified the decree on other grounds, but on the whole it must be taken that the Provincial Court, which tried the case, went on the broad principle that the son of a predeceased elder son was entitled to the Zemindary in preference to a surviving younger son. No appeal was preferred against the decree. The estate then passed to C, at whose death it was claimed by the plaintiff, as son of Y, the deceased elder brother of Z. The original Court held, amongst other grounds for dismissing the claim, that Z was a nearer heir than the plaintiff. The decision was reversed by the Madras High Court, which held that by the ordinary law of primogeniture, applicable to impartible estates, the plaintiff

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represented the eldest line. It will be seen that there was an important distinction between the two disputed successions. In the first case B was the grandson of the last male holder, and therefore, in an ordinary case of succession, would have as good a claim as his uncle X; a son and a grandson being considered equally near, and equally efficacious. But in the second case the plaintiff and Z were cousins, and in an ordinary case of collateral succession the nearer takes before the more remote, as for instance, a brother before a nephew. This was the view submitted to the Judicial Committee. On the other hand it was argued that the property, though impartible, was still joint family property, and therefore passed by survivorship, in which case Y was the heir expectant during his life, and at his death his rights passed on to the plaintiff who represented him. The Judicial Committee, however, found that there had been a partition of the whole property during the life of B, under which he took the Zemindary as separate estate. Consequently, the widow of C was the heir, and it was unnecessary to decide between the claims of the plaintiff and Z. (Runganayakamena *v.* Ramaya, P. C., 5th July 1879). Upon principle it would seem, that at the death of each holder the estate would go to the eldest member of the class of persons who, at that time, were his nearest heirs. If so, Z was certainly nearer to C, than

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the plaintiff. This seems to have been the ground of the decision of the Judicial Committee, in a case relating to the Tipperah Raj, where the question was, whether an elder brother by the half-blood, or a younger brother by the full-blood, would be the next heir to a Raj. They were pressed with the argument that on the death of the previous holder, who was the father both of the deceased Rajah and of the claimants, the Raj had vested in all the brothers jointly, though of course it could only be held by one. If so, of course, all the brothers were equally near to the father, and on the death of one it would survive to the eldest. But the Committee held that in the case of an impartible estate survivorship cannot exist, as being an incident of joint ownership, which is inconsistent with the separate ownership of the Rajah. Therefore, title by survivorship, where it varies from the ordinary rule of heirship, cannot, in the absence of custom, furnish the rule to ascertain the heir to a property, which is solely owned and enjoyed and which passes by inheritance to a single heir. Then, upon the double ground of nearness of kin and religious efficacy, the whole blood was entitled in preference to the half blood (1) ; that is to say, they held that nothing vested in any member of the family until the death of the last holder, and that at his death the heir was the

(1) Neelkristo Deb *v.* Beerchunder, 12 M. I A. 523, 540. Sec. 3 B. L. R. (P.C.) 13 ; Sec. 12 Suth. (P.C.) 21.

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person who was nearest to him. Some of the language used by their Lordships in their Judgment seems inconsistent with the Shivagunga case, and those cases which followed it, but the decrees themselves, and the *ratio decidendi* in each, are perfectly in harmony. The Shivagunga case settled that where an impartible Zemindary was joint property, the heir to it must be sought among the male coparcenary. That is to say, no female nor separated member could succeed. The Tipperah case decided that amongst these coparceners the person to succeed was the one, who was nearest the last male holder at the time of his death, and that the principle of survivorship could not be applied so as to give the succession to a person, who was not the nearest heir.

In a later case, when the succession to one of the Chittur Polliems was disputed, the Madras High Court followed its own decision in *Runganayakumma* v. *Ramaya*, and refused to be bound by the principle laid down in the Tipperah case. The state of the family is shown by the following diagram :—

4TH PALAIYAGAR.

A	Kuppi	Gopal.
B	9th Palaiyagar	Plaintiff
Venkatachalapati 11th Palaiyagar, Defendant.	10th Palaiyagar leaves widow Achamma, Plaintiff.	

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On the death of the 4th Palaiyagar, his distant collateral relation, Kuppi succeeded as 9th Palaiyagar by an arrangement with his elder brother A. It was found that by this arrangement the elder consented to resign his immediate right of succession and that of his descendants in favor of Kuppi and his descendants; but that any rights which A, and his line might have in failure of Kuppi and his line were preserved intact. Kuppi was succeeded by his son, who died leaving no issue, but a widow Achamma, his uncle Gopal, and his cousin Venkatachalapati. The Government gave the Polliem to the last named person, who was sued by both the widow and Gopal. The claim of the widow was dismissed on the ground that the family was undivided, and that of Gopal on the ground that the defendant was the nearest heir. The Court held that the ruling in the Tipperah case that co-ownership, and therefore survivorship, did not exist in impartible property, was opposed to the doctrine of the Shivagunga case, and to the ordinary law of Southern India and Benares, respecting the impartible property of a joint family. They laid down the canon that "when impartible property passes by survivorship from one line to another, it devolves not necessarily on the coparcener nearest in blood, but on the nearest coparcener of the senior line."

In a later case, the judicial committee

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drew a distinction between lineal and ordinary primogenitures, which may perhaps reconcile the apparent conflict of cases (Achal Ram *v.* Udai Pertab, 11 I. A. 51). The estate was one of the Oudh Taluks. Under Act I of 1869 which governs such estates it is provided that each taluk is to be entered in one or other of certain lists, which regulate its mode of devolution. The estate in question was entered in the second list, which is a list of the taluqdars whose estates, according to the custom of the family before 1856, ordinarily devolved upon a single heir. It was not entered in the third list, which included estates regulated by the rule of primogeniture. The plaintiff was the eldest surviving male of the eldest branch of the family of Pirthi Pal from whom descent was to be traced, but there were in existence other males of junior branches of the same family who were nearer of kin to Pirthi Pal than he was. The defendant admittedly had no title. Both Courts found that the estate went by the rule of primogeniture ; by which apparently they only meant, that as between several persons of the same class, the eldest would be entitled to succeed. Both Courts found in favor of the plaintiff, but the Judicial Commissioner seems to have thought that his decision only went in favor of the family as against the defendant, and that the rights of the respective members of the family, *inter se*,

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would be still open to discussion. The Privy Council reversed the decree of Lower Courts. They pointed out that the plaintiff in ejectment must make out an absolute title in himself. It was necessary therefore for the plaintiff to make out that the estate descended according to the rules of lineal primogeniture as distinguished from descent to a single heir amongst several in equal degree. That when a taluqdar's name was entered in the second list and not in the third, the estate although it is to descend to a single heir is not to be considered as an estate passing according to the rules of lineal primogeniture. Consequently that the plaintiff had not established a title which would enable him to evict a defendant in actual possession.

Possibly the following rules may be found to reconcile all the cases :—

1. When an estate descends to a single heir, the presumption is that it will be held by the eldest member of the class of persons, who would hold it jointly if the estate were partible.

2. In the absence of evidence to the contrary, the heir will be the eldest member of those persons who are nearer of kin to the last owner than any other class, and who are equally near to him as between themselves.

3. Special evidence will be required to establish a descent by lineal primogeniture, that is by continual descent to the eldest

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member of the eldest branch, in exclusion of nearer members of younger branches.

4. The presumption as to primogeniture of either sort may be rebutted by showing a usage that the heir should be chosen on some other ground of preference."*

I have quoted the above observations of Mr. Mayne in full so that you have every thing which can be said in favour of his position which in my opinion is erroneous. There is another ground in favour of the contention of Mr. Mayne which ought to be mentioned here. The High Court of Madras has laid down a rule that inheritance to impartible property is governed by the ordinary rules of inheritance of Hindu law, subject only to the modification that when there are several heirs of the same degree, one only, *i.e.*, the eldest among them should take. This rule is incompatible with lineal primogeniture. But I have already told you that principles other than those which govern inheritance govern impartible estates and offices. They are governed by Kulachar. But this Kulachar among Hindus means succession of the eldest among sons. When there are no direct descendants, there are no rules of succession to be found in the Smritis or the Puranas. The rule of the Madras High Court would be a rule consistent with Hindu Law

* Mayne, Sec. 499-502.

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and easy of ascertainment. But unfortunately there is no justification for it in the ancient books. The logical inference from a rule of primogeniture would be representative primogeniture. As regards direct descendants, the rule has been established by ancient custom in India and is seldom questioned. That the son of a predeceased eldest son takes in preference to the surviving son, is a proposition which is not doubted. This goes against the rule of the Madras High Court and of Mr Mayne. As regards more distant heirs it would probably have been better to follow the said rule. But the custom of principalities in Europe of other Aryan nations is evidence of the custom of the ancient Hindus. Again the customs of the Rajput States would go to show that Hindu jurists like European jurists in very ancient times favoured the rule of lineal primogeniture as more logical of the two rules. Once it is conceded that the eldest son succeeds in preference to the younger, there is a natural expectation in the mind of the son next in birth that he and his children would take on failure of the line of the first son. There is nothing in Hindu law against this natural and logical position, if it is conceded that the rule of primogeniture is primarily based on custom or Kulachar. There are two positions before you, first that the ordinary rule of inheritance subject to the modification of the eldest taking

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applies, and the second, that the rule of lineal or representative primogeniture applies. The question is a very difficult one. But the second is more logical and has been accepted as the custom of other Aryan nations and every thing goes to show that it is the custom of Hindus also. Colonel Tod cites instances, from which it may be inferred that the rule of representative primogeniture prevails in all the Rajput States.

In England, Digby, in his valuable book on the land tenures of England p. 84 says: "The point as to the respective rights of the younger son and a grandson (child of a pre-deceased elder son) was by Bracton's time settled by the adoption of the general principle that the issue represent the ancestor in infinitum." "Stated generally the rule is that among persons of equal degree in relation to the purchaser, males are entitled one after another in the order of their birth, females take together as coparceners" (p. 377). Again he says: "If the purchaser at his decease leaves no children or descendants surviving him, the lands will go to his nearest male ancestor, the paternal line being preferred to the maternal."

In Bombay, it has been held that under the Hindu Law, the son of a pre-deceased elder son takes in preference to a younger son (Ram Chandra *v.* Vencata Rao, 6 Bom. 613). In

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Madras also, the same rule was early laid down (1).

Settled rule that lineal primogeniture applies to direct male descendants.

Indeed so far as direct descendants up to the greatgrandson are concerned, the rule seems to have been adopted in all the Courts, both under the Mitakshara and the Dayabhaga, whether the estate is joint or separate, that the rule of representation applies and the senior son's son and grandson would stand in his place, because as Muthusami Ayyar, J., observes in Muttuvaduganadha *v.* Perisami "the spiritual benefit derived from three lineal male descendants such as son, grandson and greatgrandson is the same." (2)

Rule as regards collateral succession.

The difficulty arises in the case of collateral succession. In a very recent case, the Privy Council held that primogeniture by proximity was only an alternative to lineal primogeniture. That was a case of an Oudh Talukdar entered in List II of the Oudh Estates Act, *viz.*, one whose estate, according to the custom of the family, on and before the 13th February 1856, ordinarily devolved on a single heir. One of the contentions put before the Judicial Committee was that the family could elect one of themselves to be sole owner. It was held that such a custom was not primogeniture. The next question raised was whether the estate was

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(1) Yenumalu *v.* Ramandara, 6 Mad. H. C. 99.
Narganti *v.* Vencatachalapati, 4 Mad. 250. See 25 I. A. 128.

(2) Muttuvaduganatha *v.* Periasami, 16 Mad. 11 affd. 19 Mad. 431 P. C.; Kachi Yuva Rangappa *v.* Kachi Kalyana, 28 Mad. 508 P. C.

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governed by the rule of lineal primogeniture or the rule of primogeniture by proximity. On that the Privy Council observed: "the first step is to ascertain whether the rule of descent was that of primogeniture. That it descended by custom to a single heir is the common case of both parties. The District Judge is of opinion that it descended by primogeniture not lineal. The alternative to lineal primogeniture is primogeniture by proximity of degree. But there is no evidence to prove such a mode of descent and if there were, it would not help the defendant's case. Among those who are in equal proximity, the elder line is to be preferred. During Nabi's life, therefore, he was heir by proximity, and if he were to be considered as dead, his son Badsha would be heir to him. It has indeed been suggested in argument, mainly with an eye to the last part of the case, that the family could elect one of themselves to be sole owner, but first, such a custom is not primogeniture, and secondly, there is no evidence of it except that of the defendant himself and a statement made in mutation proceedings Independently, however, of the failure to show an alternative, there is good evidence in favour of lineal primogeniture." (1) This decision goes to favour the position that the senior line should be preferred and in such line, the son

(1) Muhammad Imam Ali Khan *v.* Hasain Khan, 29 Cal. 81 P. C. Bhai Narendra *v.* Achalram, 20 Cal. 649.

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takes the place of the father and that primogeniture by proximity should be considered as an alternative to lineal primogeniture.

In Madras, the settled rule is that "when impartible property passes by survivorship from one line to another, it devolves not necessarily on the coparcener nearest in blood, but on the nearest coparcener of the senior line." (1) The rule has been approved by the Privy Council. (2)

Primogeniture, whenever mentioned in Act I of 1869 (Oude Talukdar's Act), is lineal primogeniture. In the most recent case on the question in Oude however, the Judicial Commissioner has held that the rule of lineal primogeniture applies only in the case of direct descendants but in the case collaterals, the degree prevails over the line, though the senior line is to be preferred when the degree is equal. (3)

In Bengal, in a recent case, the Privy Council while upholding a proved custom of lineal primogeniture, said that standing alone, it might not be sufficient to establish that the rule applied to collateral succession but it has an important bearing on it (4).

Muhammadan kings very often applied the rule of lineal primogeniture to Hindu Rajes. In 1771, the Nawab Nazim of Murshidabad gave an

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(1) Narganti *v.* Vencata, 4 Mad. 250. Yenumala *v.* Ramandora, 6 Mad. H. C. 93. Kache Yuva *v.* Kache Kaliyan, 24 Mad. 562affd. 28 Mad. 508 P. C. (2) Muttarvaduganadha *v.* Perisami, 23 I. A. 128.

(4) Mohesh Chunder *v.* Satrughan Dhal, 29 I. A. 62 ; 29 Cal. 343.

(3) Thakur Ghisa Singh *v.* Thakur Gajraj Sing, 33 I. C. 372 ; 18 Oud. Cas. 239.

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opinion in favour of the custom in the Pachete Case (1).

It has also been held that one descended from a senior line is preferred to one descended from a junior line, when there are others related in equal degree (2).

In a very recent case the Privy Council have held that the rule of lineal primogeniture may apply even when the estate passes by survivorship from one line in another, and that the nearest coparcener of the senior line was entitled to succeed in preference to a coparcener nearer in blood of the Junior line(3).

In a case from Midnapore in Bengal, in a family governed by the Mitakshara, though connected with other families governed by the Dayabhaga, it was found that the eldest son of the ruling Raja took the title of Yuvaraj, the second that of Hikim, the third that of Bara Thakoor, the fourth that of Koer, the fifth that of Musib, and the remaining sons that of Babu. The Privy Council found that the rule of lineal primogeniture was established upon the following circumstances : (1) that it was proved that according to *Kulachar* or custom in this family a grandson whose

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(1) See 5 Moore, p. 84.

(2) Narendra *v.* Achalram, 20 I. A. 77. Mahammad Imam Ali Khan v. Hussain Khan, 26 Cal. 81 P. C. Rup Sing *v.* Baisni, 7 All. 1 P. C.

(3) Kachi Kaliyana *v.* Kachi Yuva, 28 Mad. 508 affirming 24 Mad. 562, See. 29 Mad. 437, 32 I. A. 261. Narganti Achammagaru *v.* Vencatachalapati, 4 Mad. 250, 266, Muthavaduganadha *v.* Perirsami, 19 Mad. 451 P. C. 23 I. A. 128.

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father was dead succeeded to the grandfather's estate in preference to a surviving uncle who was younger than his fathar; (2) there was no instance of a collateral relation in a junior line nearer in degree being preferred to the descendant of an elder line; (3) the oral evidence showed that it was well understood in the family belonging to the same group that no descendant of a younger branch could take until all the elder branches were exhausted, though no witness was able to point to any actual instance in which the rule had been either followed or departed from; (4) there were decrees relating to disputes in families belonging to the same group, in which it was decided that the rule of succession was lineal primogeniture and which although not binding on the parties to the suit, showed the prevalence of the custom among families having a common origin and settled in the same part of the country. (1)

General rule of succession to impartible property.

In Calcutta it has been held that the rule of succession to an impartible estate is that of the general Hindu law, which governs the succession to a partible estate, with such qualifications only as flow from the impartible character of the property. (2)

In the most recent case on the question, the Madras High Court have held that in case of

(1) Mohesh Chunder Dhal *v.* Satrughan Dhal, 29 Cal. 243 P. C.
(2) Kali Krishna Sarkar *v.* Raghunath Deb 31 Cal. 224.

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a joint family succession devolves on the class of coparceners to whom it would devolve under the ordinary law but the rule is modified by the other rule of primogeniture, which determines who among them should be the sole successor (1).

In an earlier case, the Madras High Court laid down the following principles governing succession to impartible estates :—

"The first of them is that a rule of decision in regard to succession to impartible property is to be found in the Mitakshara law applicable to partible property, subject to such modifications as naturally flow from the character of the property as an impartible estate. The second principle is that the only modification which impartibility suggests in regard to the right of succession is the existence of a special rule for the selection of a single heir when there are several heirs of the same class, who would be entitled to succeed to the property, if it were partible under the general Hindu law. The third principle is that in the absence of a special custom, the rule of primogeniture furnishes a ground of preference. In determining who the single heir is according to these principles, we have first to ascertain the class of heirs, who would be entitled to succeed to the property, if it were

(1) Viswanathswamy, *v.* Kamu 21 I. C. 724, 24 Mad. L J. 271.

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partible, regard being had to its nature as coparcenary or separate property and we have next to select the single heir by applying the special rule indicated above." (1)

No exception can be taken to the above rules, which are of a very general character, and which were cited with approval by the Privy Council (2). The judges, however, laid down another rule that an impartible estate may be a joint family property and the rule of survivorship is applicable and thus an elder half-brother might be preferred to a younger full-brother. This last proposition is not quite free from doubt, having regard to the recent decisions of the Privy Council mentioned above (3), to the effect that an impartible estate cannot be an ordinary Hindu joint family property. In Muttarvaduganadha *v.* Perisami, 23 I. A. 128, the rule prevailing in Madras was affirmed, namely, "when impartible property passes by survivorship from one line to another, it devolves not necessarily on the coparcener nearest in blood, but on the nearest coparcener of the senior line." (4 Mad. 265). Under the Bengal School, in an impartible Raj, it has been held that a full brother should be preferred to a half-brother (4), and that is also the ordinary

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(1) Subramanya, *v.* Siva Subramanya, 17 Mad. 325.

(2) 31 All. 475.

(3) Vencata Surya *v.* The Court of Wards, 26 I. A. 83.

(4) Neelkristo Deb *v.* Beer Chunder, 12 Moore 523.

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rule under the Mitakshara. It would be simpler, if the ordinary Hindu law of succession applied to impartible estates, subject to the modification that if there are more than one person of the same class, who would be the heir, the eldest among them should take, if they are of the same line, and the representative of the senior line should take, if they represent different lines. The rule of lineal primogeniture would, however, not recognize the distinction between half-blood and full-blood.

The right of sons and other direct male descendant.

The eldest son has a right to succeed to an impartible estate, except in certain Taluks mentioned below. The eldest son of a predeceased eldest son succeeds in all estates not governed by the custom of primogeniture by proximity.

The rule generally prevails that not only the grandson but the eldest male descendant in the direct senior line is entitled to succeed. It has been, however, held that this rule of lineal primogeniture in regard to direct descendants, is evidence but not conclusive proof of the existence of the custom of lineal primogeniture as regards collaterals.

It was at one time held in Madras, that the younger son by a senior wife was entitled to succeed before his elder by a junior wife. The proposition was based on a misinterpretation of Manu, IX, 122-125 (1) and the Privy Council

(1) पुत्रः कनिष्ठो जेग्रष्ठायां कनिष्ठायां च पूर्व्वजः।
कथं तत्र विभागः स्यादितिचेत् संशयोभवेत्॥

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have held that it has no foundation in Hindu law (1). It has also been laid down by Vrihaspati that "among twins the right of the eldest arises from being born first" (2). There may, however, be a valid custom that the younger son by the senior wife should succeed before his elder by junior wife and a younger son by a wife of the higher caste should be preferred to an elder son by an inferior wife (3).

Right of the adopted son who cannot take when there is a direct male descendent.

It is also a rule of Hindu Law and the rule has been affirmed by a decision in Madras that the adopted son, though he can succeed like an Aurasa -son, cannot succeed to an impartible estate, when there is an after-born Aurasa son or any direct male descendant (4).

ऐकं वृषभमुद्धारं संहरेत् स पूर्व्वज: ।
ततोऽपरे जैग्रष्ठवृषास्तदुनानां खमातृत: ॥
जैग्रष्ठस्तु जातो जैग्रष्ठ्यां हरेद्वृषभषोड़श: ।
तत: खमातृत: शेषा भजेरन्निति धारना ॥
सदृशस्त्रीषु जातानां पुत्राणामविशेषत: ।
न मातृतो ज्येष्ठमस्ति जन्मतो ज्येष्ठमुच्यते ॥

If there be a doubt how the division shall be made in case the younger son is born of the elder wife (then the son) born of first wife shall take as his additional share one (most excellent) but, the next best bulls (shall belong) to those (who are) inferior on account of their mothers. But the eldest (son, being) born of the eldest wife, shall receive fifteen cows and a bull, the other sons may then take shares according to (the seniority) of their mothers ; that is a settled rule.

Between sons born of wives equal (in caste) (and) without (any other) distinction no seniority in right of the mother exists ; seniority is declared (to be) according to birth. Manu, Ch. IX, V. 122-125.

(1) Jagadish *v.* Sheo 28 I. A. 100, 23 All. 369. Pedda Ramapper *v.* Bangari, 18 I. A. See 17 W. R. 55.

(2) यमयोश्चैव गर्भेषु जन्मतो जैग्रष्ठ्यमुच्यते। Vrihaspati cited in the Kalpataru.

(3) Sundaralingasami *v.* Ramasawmi, 26 I. A. 55.

(4) Ramasami *v.* Sundralinga, 17 Mad. 435.

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Adopted son can divest brother.

In joint family impartible estates, the widow of the last holder may adopt after the estate had vested in the brother or other coparcener and on such adoption, it has been held by the Privy Council that the adopted son will divest the coparcener who had succeeded, and will be entitled to the estate (1), but the rule has also been laid down that the widow of the last male holder can alone adopt and no adoption can be made to a prior male holder (2).

Rule of Tanistry in certain estates.

In a case from Oude, a talukdar being called upon to state what the law of devolution of the estate was, said, "The usage established by prescription in petitioner's family is still in force ; namely, that out of several sons an able one had up to this time been selected and nominated as talukdar without reference to seniority" and the estate was therefore entered not in list 3 prepared under the Oude Estates Act, which contains the primogeniture estates, but in list 2, which contains the estates which go to a single heir. Upon this the Privy Council held that "however true it may be, that if there is absolutely nothing to guide the mind to any other conclusion, an impartible estate will descend according to the law of primogeniture, it is impossible to say that there is no such guide in this case" and that according

(1) Sri Virada *v.* Sri Brozokishore, 3 I. A. 154 ; 1 Mad. 69. Bachoo *v.* Mankorebai, 29 Bomb. 51.

(2) Sinna Chami *v.* Ramasamy, 13 I. C. 7 ; 22 Mad. L. J. 85.

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to the late talukdar "the law which is familiar to us under the name of tanistry or something very like it prevailed." The Privy Council held that the onus of proving that the rule of primogeniture prevailed was on the plaintiff, and he having failed to do so, the suit was rightly dismissed both as regards the taluk and also as regards other family propety in respect of which also devolution depended on family custom (1). But the real decision was based by the Court below on a will by which the defendant had been nominated as sole heir under section 11 of Act I of 1869.

In a previous judgment the Deputy Commissioner of Sitapore, after stating that though there was evidence that it was the custom of the family for the most able to succeed, there was no evidence that Ishri (the plaintiff) had been selected as such, said, "There is no doubt that this was the custom in most families in this district and was probably the custom of the smaller taluks in the greater part of Oude." The statement was quoted with approval by the Privy Council. It must, however, be said that there is very little evidence of the rule of tanistry prevailing under ancient custom in India. In Europe as well as in India, it is a special rule prevailing in some special provinces and very strong evidence ought to be required to establish it.

(1) Thakur Ishri Sing *v.* Thakur Baldeo Sing, 10 Cal. 792 P. C.

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Failing direct male descendants, unless there is a custom of male succession, the widow succeeds to separate impartible property.

It was certainly the ancient law of the Hindus that a Raj could not go to females. But it has been held by our Courts that, unless a custom to the contrary is proved, widows and daughters would take (1). The Privy Council have held that "there is no inconsistency between a custom of impartibility and the right of females to inherit, and the general law must prevail, unless it is proved that the custom extends to the exclusion of females." (2).

Right of widows and daughters.

Among widows, the senior is entitled to preference before the junior (3),

Senior widow succeeds.

After the widow the daughter takes.

When there are several daughters, on the death of the eldest, even if she leaves a son, the next surviving daughter takes (4)

Right of daughters—eldest succeeds.

On the death of all the daughters, the eldest among the daughters' sons, even though he may not be the son of the eldest daughter takes. On the death of a daughter "the root of title is to be sought not in herself but in her father" even in the case of impartible property (5).

Right of the daughter's son—eldest succeeds.

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(1) Vutsavay *v.* Nutsavay, I Mad. Dec. 453. Seenvulala *v.* Tunama. 2 Mad. Dec. 40. (s) Ram Nundan Sing *v*, Janki Koer, 29 Cal. 828, P. C

(2) Ramnundun Singh *v.* Janaki Koer, 29 Cal. 828 P. C.

(3) Kathama Natchiar *v.* Dorasmga, 6 Mad. H. C. 310.

(4) Bijai Bahadur *v.* Bhupendra Bahadoor, 22 I. A. 139.

(5) Mutta Vaduganatha *v.* Dorasinga, 8 I. A. 99.

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Right of brothers.

When however, a daughter's son succeeds in default of all the daughters, he takes an absolute estate and his heir and not the heir of his maternal grandfather takes (1).

Daughters and daughter's sons in Northern India.

In this connection, it should be observed that in some parts of Northern India, Oude and the Punjab, property cannot be taken by daughters or daughters' sons. A circular of the Chief Commissioner of Oude, No. 42 of 1864, affirms this rule, which was the original law of the Hindus, in respect to the great Kshatriya families. It is quite clear that in old times impartible estates never went to females.

It was held by the Privy Council in a case about succession of Majjan Shahpore estate in Oude, which was one of the four estates carved out of the Bhera estate and entered in lists 1 and 4 under the Oude Estates Act, that though succession to estates in list 4 is regulated by "the ordinary law to which members of the intestate's tribe and religion are subject," among Chouhan Rajputs, daughters and their issue are excluded by agnates by custom and the custom was proved in the case and should be given effect to, notwithstanding the fact that the estate was entered in list 4 and was thus regulated by the ordinary law (2). Among Bhale Sultan tribes of Chhatris of

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(1) Mutta Vaduganatha *v.* Parisaml, 23 I. A. 128.

(2) Parbati Kunwar *v* Chandrapal, 31 All. 457, 36 I. A. 25.

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Northern India, (1) as well as among Chudarasume Garaseis of Bombay and Utpal families of Sholapore (2), daughters and their issue are excluded.

Right of the mother, step-mother and adopting mother and grandmother.

Failing widows, daughters and daughter's sons the natural mother succeeds, failing her, the senior step-mother. The adopting mother has been preferred to a senior wife of the father as heir to her son (3). After the mother, the grand-mother takes.

The father and the grandfather are not mentioned, because the property ordinarily descends from them. But when the property had been inherited from a maternal grandfather, the father and the grandfather are entitled to succeed according to the general rules of suceession.

Limited interest of females.

The widow, the daughter, the mother, the grandmother and other female heirs take limited interests as under the law governing partible property and after their death the reversioner who would be entitled to succeed under the ordinary law takes. In the Bombay Presidency the daughter takes an absolute estate.

When a widow took impartible property ostensibly as heiress of her husband and conveyed it to her son-in-law, the next heir of

(1) Bajrangr Sing *v.* Manokarnica, 30 All I. P. C.

(2) 27 Bomb. 496 at 498, 11 Bomb. H. C. 249.

(3) 26 I. A. 246.

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the husband, who was the son of a rebel whose properties had been forfeited to Government, was held entitled to succeed, when he sued within 12 years of the death of the widow (1).

Female heirs succeed to Ghatwali.

Ghatwali tenures are supposed to be the exclusive property of the ghatwal for the time being under Regulation 29 of 1814 and not joint family property. When they are impartible, as they are as a rule, succession to them is governed by the law of primogeniture, and in the absence of a custom to the contrary, females are not excluded from succeeding to them (2).

Female heirs succeed to Polliams.

In regard to Polliams also, females succeed when the custom of the exclusion of females is not proved (3).

Full brother's preferential right.

After the grand-mother, the brother takes. Among brothers the eldest takes but if he be a half-brother, the eldest among the full brothers takes. This was held under the Bengal School in the Tippera case (4) and the rule has been affirmed under the Mitakshara in Madras. Muthusami Aiyar J. cited with approval the above case and observed: "it is the nearest in blood to the last male holder that is the

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(1) Ramnandan Sing *v.* Janki Koer (Bettia case), 29 Cal. 828 P. C.

(2) Doorga Persad *v.* Doorga Koeri, 4 Cal. 190. P. C. Chhatradhaey Sing *v.* Saraswaty Kumary, 22 Cal. 256.

(3) The Collecror of Madura *v.* Veracamoo, 9 Moore 446.

(4) Neelkisto Deb *v.* Beerchunder, 12 Moon. 523.

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proper heir and not the senior member of the whole group of agnates." This decision was approved by the Privy Council (1).

Illegitimate brother among Sudras may take by survivorship.

It was held in an Orissa case that among Sudras, an illegitimate brother may take an impartible estate by the rule of survivorship (2).

Devolution governed by the rule of succession of particular schools.

In all cases, succession is regulated by the particular school to which a family is subject.

Thus under the Dayabhaga, female heirs may succeed, even when the family is joint.

Widows may succeed by customs.

Female heirs may also succeed by custom even in joint Mitakshara families (3).

Custom in Tippera Raj.

In the Tippera Raj, there is a custom that a Raja on succeeding to the State, appoints one to be the Yuvaraj and another to be the Bara Thakoor, of whom, on the death of the Raja, the Yuvaraj becomes the Raja and the Bara Thakoor becomes the Yuvaraj (4). Recently the High Court has held that the reigning Raja of Tippera can annul the appointment of a Bara Thakoor and appoint his own eldest son as Yuvaraj (5).

Succession in Oude Taluks.

Succession in Oude Taluks is regulated by Act I of 1869. The Taluks entered in the second, third or fifth of the lists, prepared in conformity with Sec. 8, descend as impartible estates to a single heir in the order mentioned in Sec. 22

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(1) Muttavaduganadha *v.* Periasami, 23 I. A. 134, Narganti, *v.* Venkatachalapati, 4 Mad. 267. (2) Jogendra *v.* Nityanund, 18 Cal. 151 ; 17 I. A. 18. (3) See Maharani Hiranath *v.* Babu Ramnarayan, 9 B. L. R. 271. Rupsing *v.* Rani Basini, 11 I. A. 154. Chowdhury Chintamon *v.* Musmut Nowlukho, 2 I. A. 263. (4) 12 Moore 523.
(5) Samarendra Chundra Deb *v.* Birrendra Kishore Deb, 35 Cal. 777.

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and failing such heirs, under cl. 11, according to the ordinary law to which members of the Talukdar's tribe and religion are subject. (1) Failing all heirs specified in Sec. 22, succession to Taluks in list 2 is governed by the custom of the family and of those in lists 3 and 5 is governed by the rule of primogeniture. Succession in Taluks in lists 1 and 6 is governed by the ordinary law.

All descend to single heir and are alienable by sale, gift and will.

All Taluks descend to a single heir and the Talukdars have the right to alienate by sale, mortgage, gift or by way of testamentary disposition.

Ordinary law under the Act includes custom.

It was settled in the Bhera case that "ordinary law" includes custom which may govern succession to an estate. (2) In one estate a custom of excluding the daughter and her issue was upheld(3). In one case it was decided that "a custom which was like the law known as of tanistry was found to prevail in a family, by which out of several sons, an able one had to be selected and nominated" (4).

Female heirs take limited estates.

It has also been held that notwithstanding sections 2 and 11 of Act 1 of 1869, all females succeeding to an estate take an ordinary Hindu widow's limited estate. In deciding this the Judicial Committee observed: "Their Lordships think that much clearer language would have to be shown to justify them in saying that the

(1) Ran Bijai *v.* Jagatpal, 18 Cal., 111 P. C. (Dasratpore case).
(2) Parbati Kumar *v.* Chandra Pal, 31 All. 457 P. C.
(3) 36 I. A. 25. (4) Thakur Ishri *v.* Baldeo Sing, 11 I. A., 135.

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Legislature has departed so far from ordinary principles of law as to empower people to alienate what may not belong to them" (1)

It has also been held that, notwithstanding the strong language of section 10 that the Courts are to accept the lists as conclusive, they may nevertheless go behind the Act to the extent of recognizing trusts and may give effect to beneficial titles, as distinct from statutory titles, under the Act (2).

Whether right to maintenance is interest under Sec. 13

Under Act I of 1869, a will in favour of a person other than one having an interest under Sec. 13 is inoperative unless registered according to its provisions. In the Gaura case (3), it was held that a mere right to maintenance was not such an interest. But in the Balrampore case, a junior widow, who had no right to the Raj in the presence of the senior widow and a son adopted by her, was still held to have such an interest and was thus entitled to the maintenance provided for her in the will (4).

Subsequent insanity does not divest.

It has been held that once an impartible estate has devolved on a person under Act 1 of 1869, his subsequent insanity would not divest him. (5)

Law in Orissa

By Regulations X of 1800 and 12 of 1805 the custom of impartibility, if found to prevail

(1) Sheo Pertap Bahadur *v.* The Alliance Bank, 25 All. 476 P. C.; 7 C. W. N. 84.
(2) Hurpershad *v.* Sheodyal, 3 I. A. 259. Seth Jaidial *v.* Seth Sita Ram, 8 I. A. 215. (3) Haji Abdul *v.* Munshi Amer, 11 I. A., 121.
(4) Maharani Indar Kunwar *v.* Maharani Jaipal Kunwar, 15 I. A. 172.
(5) Ran Bijai *v.* Jagat Pal, 18 Cal. 111, P. C.

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in the Jungle Mahals and Orissa, was declared to be valid. By Regulation XI of 1816 certain tributary Mahals of Orissa were declared impartible.

Succession in Garjats of Orissa.

As regards the Garjat Rajas and Tributary Mahals of Orissa, succession is governed by the customs recorded in the Puchees Sawal (1).

In Orissa, holders of offices, like Chowdhury, claim impartibility of their estates and succession by primogeniture. The Privy Council held that such a custom did not exist during the Native rule and during the British rule it had not been uniformly accepted as valid and was thus inadmissible (2).

Succession in impartible estates in Chotanagpur.

As regards the impartible estates of Chotanagpore and Hazaribagh, they are governed by custom. Colonel Dalton and Mr. Hunter made records of their customs, which are useful in ascertaining them. But such custom must nevertheless be proved in each case by other sufficient evidence.

Custom of appointing Yuvaraj.

In ancient times, kings used to appoint the eldest son as Yuvaraj, when he attained majority, preparatory to abdication. Dasaratha appointed Bharata as Yuvaraj supplanting Rama, his eldest son. Bharat, however, consented only to act as the representative of

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(1) 4 Select Reports 39; 6 Select Reports 42; 296, 1 Sudder Report 16; 3 W. R. 116. Gopal Prosad Bhagut *v.* Raghunath Deb, 32 Cal. 158. The Pucchees Sawas is printed in the Appendix.

(2) Romakant *v.* Shamanund, 36 Cal. 590 P. C. reversing 32 Cal. 6. See Stirling's Account, Geographical, Statistical and Historical of Orissa.

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Rama for twelve years and resigned it on the return of the later from the conquest of Lanka. This custom of abdication is also affected by certain modern Rajas. In the Durbhanga Raj, it was proved that the custom of succession in that Raj was that the Raja abdicated in his lifetime in favour of the eldest son or the next heir, who succeeded to the Raj (1). It has also been held that abdication in favour of the son was allowable, and the son in such a case can question alienations by the father even in his lifetime (2).

Custom of abdication.

The law as to succession to Vatans has become complicated on account of several settlements and legislation mentioned in the last chapter. The assessment of rent in lieu of services and discontinuance of service were supposed by some authorities as making the estates partible and alienable of themselves. The law has now been settled that land granted with a condition of service attached to the grant cannot be resumed when the service is no longer required. But land granted as remuneration for service may be resumed when the service is no longer required, except when there has been a grant of an hereditary office to those who are to perform the service, in which case the land can only be resumed

Succession to Vatans.

(1) Gonesh *v.* Moheshwar, 6 Moore 164.

(2) Luchmi Narain Sing *v.* Gibbon, 14 W. R. 197.

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when the need of such service altogether ceases, but where the services are still required and the grantee has a right to the hereditary office, he cannot be deprived of the land on the mere ground that the grantor prefers to appoint some one else to officiate or to do away with the service (1). Discontinuance of services attached to an impartible Vatan, it has been held, does not alter the nature of the estate and make it partible (2). A Full Bench of the Bombay High Court considered the question as to the effect of the Bombay Acts 2 of 1865 and 7 of 1863. It held that lands affected by those Acts became alienable when the services were abolished, except in cases where there is a concurrent family custom operating to keep the Vatan estate together. Such a custom may continue and may singly bind the hands of the successive holders of the property after the former restriction has failed or been removed. The abolition of public duty does not alter the nature of the estate. If the family custom forbids alienation beyond the lifetime of the alienor, the custom will operate equally after the patrimony has ceased to be a Vatan as before.

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(1) Bhimapaiya *v.* Ram Chandra, 22 Bom. 422. Forbes *v.* Meer Muhamed Tagore, 13 Moore 464. See Ravji *v.* Mahadev Rao, 2 Bom. H. C. R. 1 (A. C. J.) 237. Krishnaji *v.* Vethalrav, 12 Bom. 80. Krishnarao *v.* Rangarao, 4 Bom. H. C. Re. 1 (A. C. J.) 11 Radhabai *v.* Anantarao, 9 Bom. 208. Lakshman *v.* Narayunrao, 14 Bom. 82 See sec. 56 of the Bombay Hereditary Offices Act 1874.

(2) Ramrao *v.* Jeshvantrao, 10 Bom. 327

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Where, however, such a concurrent custom does not affect an estate and it is freed from its connection with the public office, the reason arising from that connection for the preservation of the estate necessarily fails and the lands become subject to the ordinary law of descent and disposal (1). It is difficult to see how custom can affect the law of descent in such cases. The analogy between the military tenures and lands attached to civil offices has led to lands attached to the latter being often considered impartible. Military tenures, though they had the burden of military service attached to them, were under the old Hindu system impartible heritable estates. As to lands attached to civil offices, the officers were liable to dismissal, and in that case the lands went to the person appointed to the service, though he might not belong to the family of the late incumbent. The old Hindu custom was that village offices were hereditary, having lands which followed the office, which ordinarily devolved on the eldest son of the incumbent. To apply the custom of kingdoms to lands attached to petty village offices is going to an unreasonable length.

However that may be, it is now settled that when a custom of impartibility has been proved, Vatans are governed by the law of

(1) Radhabai *v.* Ramchandra, 9 Bom. 198.

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primogeniture. But the Bombay Courts say that succession to these Vatans is governed by the rule of the right of eldership of the senior member (1). In the case of Gopalrao *v.* Trimbakrao, a decree of 1773 passed by the Minister Raghunath Bajirao Peshwa was produced, according to which the custom of the Mahske family whose property was in dispute, was held to be that the succession went always to "the eldest whose business was to affix the seal and signature and conduct all the business" and the descendants of the younger son received lands for maintenances and "in addition money for defraying the expense of wedding and other household matters." The right of eldership spoken of here, though it is not clear, probably, means the right of the eldest branch to succeed. The right of eldership would ordinarily mean the right of the eldest member to succeed. But the headnote of the case says that the law of primogeniture was held to prevail.

Under Act 3 of 1874, succession to Vatans coming within the purview of the Act is governed by sections 26, 27, 33 and 36 and by section 2 of Act 5 of 1886. Under the Act, the Collector should ascertain the custom of families and register representative Vatandars. In case of the death of a representative Vatan-

(1) Gopalrao *v.* Trimbakrao, 10 Bom. 598. Ramrao *v.* Yeshvantrao, 10 Bom. 327.

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dar, the Collector should register the name of the eldest son. Adopted sons are entitled to succeed. In case of females, only widows of the last holder are entitled to succeed, every other female member or heir through a female being postponed to every male member of the family qualified to act. But in case of a widow succeeding, there should be a male deputy appointed, who could act for her.

In the Bombay Presidency, a female could succeed to a Majumdari Vatan, as she could appoint a male to perform the services (1). Since the passing of Act XI of 1843, a female can inherit such a Vatan and the Collector can assign the whole proceeds of a Vatan to the person who officiates for her (2). By the Bombay hereditary offices Act 3 of 1874, as amended by Act 5 of 1885, female members of a Vatan are postponed to male members in matters of succession and though a widow can once adopt and give the adopted son title to succeed, she cannot adopt again after his death.(3)

Succession to Madras Karnams

In Madras, succession to hereditary offices called Karnams are regulated by the provisions of Reg. 29 of 1802. Under Sec. 7 of Reg. 29 of 1802, the Zemindar is bound to appoint

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(1) Governor of Bombay *v.* Damodar Parmanandas, 5 Bom. A. C. 702.

(2) Bai Suraj *v.* Government of Bombay, 8 Bom. A. C. 88.

(3) Brendan *v.* Sundarbai, 38 Bom. 272.

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from among the heirs of the deceased Karnam in order that the office may remain hereditary in the family but, he can pass over the nearest heir in case of personal incapacity. On the construction of this section, it has been held that the widow or any other female heir is not entitled to succeed and the nearest male Sapinda succeeds. (1) It has also been held that in case of minority or other incapacity of the heir, the nearest male Sapinda will succeed and subsequent removal of the incapacity, such as minority, will not entitle the heir to claim the office after such removal. (2) It has also been held that the heir entitled to succeed is the heir to separate heritable property and the daughter's son is thus entitled to succeed before the brother's son (3).

Succession in Madras Tarwads.

I have already given you a description of Madras Tarwads. I have now to tell you of the mode of succession of the manager or Karanavan. The following account of the principal Malabar family and the rule of succession, governing it is to be found in the judgment of the High Court of Madras in Vira Rayen *v.* Vaha Rani Pudia, (3 Mad. 141): "The parties to this suit are members of the family of

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(1) Alymalammal *v.* Vencataramayyan, S. D. A. decisions Mad. 1844, p. 83. Vencataratnamma *v.* Ramanujasami, 2 Mad. 313. Vencata *v.* Rama, 8 Mad. 257. Chandramma *v.* Vencataraju, 10 Mad. 226.

(2) Vencatanarayana *v.* Subbarayuda, 9 Mad. 214.

(3) Krishnanoma *v.* Papa, 4 Mad. H. C. 234. Seetaramayya *v.* Vencatarazu, 18 Mad. 420.

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the Tamuri Rajas or Zamorins of Calicut. The family comprises three Kavilagoms or houses—the *Pudia*, *Padiyara* and *Keyaka* Kovilagoms. Of these each has its separate estate, and the senior lady of each Kovilagom, known as the *Valia Tamburatti* of the Kovilagom is entitled to the management of the property of the Kovilagom. There are five stanoms or places of dignity with separate properties attached to them, which are enjoyed in succession by the senior male members of the Kovilagoms. These are in order of dignity—(1) the *Zamorin*, (2) the *Eralpad*, (3) the *Munarpad*, (4) the *Edartharapad*, and (5) the *Nadutharpad ;* and it would seem that, at the beginning of the century, there was also a sixth stanom known as the *Elbaradi Terumapad* (Buchanan, p. 83), but as no mention is made of this stanom in the present proceedings, it may be that it has ceased to exist.

The senior lady of the whole family, who is known as the *Vaha Tamburatti*, also enjoys a stanom with separate property ; this stanom is termed the *Abadim Kovilagom*.

In the management of the properties of the three Kovilagoms the senior ladies are often assisted by the males or Rajas who in time may pass out of the Kovilagom and attain one of the separate stanoms.

There are no family names and the stanom-holders are distinguished after their deaths by

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the name of the year in which they respectively died. All property acquired by the holder of a stanom, which he has not disposed of in his lifetime, or shown an intention to merge in the property attached to the stanom becomes, on his death, the property of the Kovilagom in which he was born. Property acquired by any member of the Kovilagom is in accordance with the principle recognized in the case of the joint Hindu family, presumed to be the common property of the Kovilagom unless proof is given that it has been acquired otherwise than with the aid of the common funds. and as in other Malabar families, properties are sometimes entrusted to the possession of a member, who is not by the customary law entitled to their management either for the purposes of management or as an assignment for maintenance. Such arrangements are made at the pleasure of the *Valia Tamburatto* of the Kovilagom, who can also at her pleasure resume any properties which have been so dealt with."

Succession in Tarwads.

There are two systems under the Malabar law, the Marumakkatayam and the Makkatyam. The former denotes the succession of nephews and the latter the succession of sons. The Nairs, as a rule, are governed by the former; the Nambudris by the latter. The Tiyars of Calicut are governed by the Makkatyam rule, and among them even all self-acquired property vests in the Tarwad by custom and the brother

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succeeds in preference to females (1), in the property of the Tarwad which is always impartible (2).

I have already given you a description of the rule of devolution in Tarwads under the Marumakkatayam system. The spirit of the system is that the joint property belongs to the females, but because of their incapacity, the eldest male member becomes the manager or Karanavan whose position is that of a life-trustee of the joint estate. The eldest male member to whatever branch of the family, whether descendants of the son or of the daughter, he may belong, is entitled to be Karanavan. In the absence of any male member, the eldest female becomes the Karanavan. (3) When the entire body of the members of Tarwad are dead, the property may be taken by another Tarwad which may be its reversioner *i. e.*, which is the nearest branch descended from the same ancestress.

Disqualification to succession as Karanavan.

It has been held that a blind man is not entitled to succeed as Karanavan and may be removed even though he has acted for sometime (4). But when he has so succeeded by consent of all parties, it has been held, a suit by him against a Kanomdar, who is not a member of

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(1) Rareehan *v.* Perache, 15 Mad. 281.
(2) Raman Menon *v.* Chathune, 17 Mad. 184.
(3) Subramanyan *v.* Gopala, 10 Mad. 223.
(4) Kanaran *v.* Kungan, 12 Mad. 307.

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the family, cannot fail on the ground of his blindness (1).

Blindness, insanity and leprosy disqualify, a person from succeeding as a Karnarvan(2) A person suffering from ulcerous leprosy, which is not congenital, is not disqualified under the Malabar law (3).

Adoption under the Malabar Law.

Adoption is allowed in Malabar. When there is a natural born son however, there can be no adoption. In the case of a Aliyasantana family, it was held that when the last female member who had a son suffering from ulcerous leprosy which was not congenital, an adoption by her was invalid (4).

Under the Aliyasantan Law as prevalent among some Canarese tribes according to a book called Aliyasantana Kuttukathlugube, which is supposed to have been a code promulgated by Bhutala Pandya a former ruler of Canara, a male though he be the sole representative of the family, can not adopt a son without adopting a daughter at the same time and that he must adopt a boy belonging to the same *Bali* and thus can not adopt his own son as father and son must necessarily belong to different *Balis*. The High Court of Madras did not consider that the

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(1) Urkandan *v.* Kunhunni, 15 Mad. 483.

(2) Kirandan, *v.* Kunhune, 15 Mad. 483. Kanaran, *v.* Kinayan, 12 Mad. 307. Sanku, *v.* Puttams, 14 Mad. 289

(3) Chanda *v.* Subba, 13 Mad. 209.

(4) Chanda *v.* Subba, 13 Mad. 209.

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authenticity and the authority of the book were established beyond doubt and held that according to the Aliyasantan custom a male could adopt his own son and could do so without adopting a daughter at the same time (1). The Government in this case claimed the estate as escheat, because the last owner's adoption and by that act, nomination of his own legitimate son, without adopting a daughter to perpetuate the line through females, was invalid. All this seems very strange to a Hindu of Northern India.

It was also held in the above case that the sole representative could make a valid disposition of his property by will and could nominate his successor, and that adoption under the Aliyasantana Law had no religious character as under ordinary Hindu Law, and was but slightly different from the nomination of a successor, which could be made by a deed or will.

A custom was also pleaded by the members of an allied family that they could nominate a successor.

In a Tarwad the right of the eldest member is an absolute legal right and he cannot, it has been held, renounce in favour of the next senior Anandravon, the term by

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(1) The Secretary of State *v.* Santaraja Shetty 21 I. C., 432, 25 Mad. L. J. 411, 14 Mad. L. J. 348.

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Nambudri Illums.

which members of the Tarwad are called (1). The reason of the decision is difficult to appreciate.

Succession in Dayadi Pattans.

Similarly it was held that the right of the eldest male member of a Nambudri family, among whom succession of females is not recognized, to manage the Illum is absolute. (2)

I have already mentioned to you the rule of Polliams. But there is a class of Palayam called Dayadi Pattans of Madura which are impartible and inalienable. In these estates a peculiar custom prevails which is thus stated. "On the demise of the Palayagar for the time being, the estate devolves not on his heir according to the Mitakshara law which in the absence of a special custom governs this part of Southern India, not on the eldest son according to the rule of primogeniture, which obtains in the other Palayams in the district owned by persons of the Kamblar caste, but on the Dayadi or cousin of the deceased Polayagar who is senior in age and who is descended from one of the three brothers who originally formed a joint Hindu family" (3). This rule was laid down by the High Court in the case of Amma Ganakanur Polliam, granted originally in ancient times by Visvanada Nayak, the founder of the Nayak dynasty of Madura.

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(1) Govindan *v.* Kannaram, 1 Mad. 353, N. A. Cherukomen *v.* Ismala 6 Mad. H. C. 245.

(2) Nambiatan *v.* Nambeatan, 2 Mad. H. C. 110.

(3) Sivasubramama *v.* Krishnammal, 17 Mad. 287.

CENTRAL LIBRARY

Succession in Muhammadan impartible estates.

There are some Muhammadan impartible estates in India. The Muhammadan Law and custom recognize impartibility in the case of ruling chiefs only. The few Muhammadan impartible estates were originally semi-independent States or estates attached to such States.

Kunjapura reasut.

The Kunjpura *reasut* is one of such States. The Privy Council thus describes it: "It was founded in the first half of the eighteenth century by an Afghan soldier of fortune of the name of Najabat Khan, who, like many other adventurers, native and foreign, had taken advantage of the troublous times, when the whole fabric of the Mogul Empire had fallen to pieces, to carve out a small principality for himself. In 1748 he obtained a Sanad from the Afghan conqueror Ahmed Shah Abdali also called Durani, then in the height of his power in Northern India, granting him a hereditary jagir of the villages, 148 in number, of which he was in possession at the time. The villages were declared to be Inam or revenue-free and he was to enjoy thenceforth the revenue payable to the imperial government subject to the obligation of maintaining order in his *ilaqua* or possession.

"It is not disputed that the chiefship has from the time of Najabat descended in the male line to a single heir and that heir has been invariably, the eldest son, save in one instance where the deceased *rais* left no

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issue and was succeeded by his eldest surviving brother."

In 1849, before the last Nawab's succession, an order of the Government was made by proclamation issued by the Governor-General, taking away all kinds of sovereign rights from the Nawabs of Kunjpura, who nevertheless continued to be recognized as titular Nawab.

It was held by the Privy Council that the estate was impartible and it was established that the estate descended in the male line to a single heir by the rule of primogeniture. The junior members were held entitled to maintenance. It was also held that immoveable properties, acquired since 1848 when the estate ceased to be a chiefship, followed the parent estate and succession to them was governed by the same rule. (1)

Tank reasut.

In the Tank case (2), it was held that succession in the family devolved upon the eldest son of the chief, the other members of his family being entitled to maintenance. This also was a State founded by an Afghan adventurer. Originally independent, it became tributary in turn to the Afghans and the Sikhs and subsequently to the British. The dispute arose about the succession to seven villages for which the chief had received a Sanad of settlement from the British Government. The Privy

(1) Ibrahim Ali Khan *v.* Muhammad Ahsan Ulla Khan, 39 I. A. 85.
(2) Muhammad Afzal Khan *v.* Ghulam Kasim Khan 30 Cal. 843.

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ADVANCEMENT OF LEARNING
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Council held that the rule of succession was that it descended in the direct male line and held that a grandson, (son of a predeceased eldest son) should be preferred to a younger son. Thus succession in the male line by the rule of primogeniture in the case of these Muhammadan estates would probably be interpreted as meaning the rule of lineal primoginiture It was also held in this case that the settlement of the villages by the Government was "not to create a fresh estate subject to the ordinary rule of inheritance but to continue to the chief for the time being, as it were *jure corônæ*, the proprietorship of the villages.

Muhammadan Oude Talukdars.

In the case of the Muhammadan Talukdars whose estates are entered in the lists mentioned before of the Oude Act, the succession is governed by the rules laid therein.

Succession in feudatory States.

In the case of Feudatory States, which hold zemindaries in British India, the zemindaries have been held to be appanages of the Raj and to belong to the chief for the time being, succession being regulated by the rules prevailing in the State as sanctioned by the Government.

Succession after regrant and resettlement.

The next question to consider is, when an impartible estate is confiscated or sold for arrears of revenue or in execution of a decree, and a new settlement of it is made by the Government, whether its impartible character and the old custom about the rule of succession are destroyed.

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ADVANCEMENT OF LEARNING
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In the great principality of Ramanad and its offshoots, this question has very frequently arisen. The Setupaties, or the guardians of the sacred causeway of Rameswaram, were chiefs of the family of Maravar with large possessions, who were feudatories of the Pandya Kingdom of Madura. At one time they defeated their overlords and became Kings of Southern India. They had helped in repelling Chola and Kanarese invasions and represented the Pandyan King in the confederacy of Hindu sovereigns organized by the Bijoynagar King, whose defeat at the battle of Talikotta in 1605 at the hands of the Muhammadan Bahmani King finally destroyed the independence which the Hindus of Southern India had, long after the subjugation of Northern India, maintained. It was all along regarded as a Kingdom not subject to partition. (1) This state of things continued till 1770, when the Raj was involved in the Carnatic wars. In 1792 the East India Company acquired by treaty all the Polygar estates including Ramnad, the status of which was supposed to be that of head Polygar. In 1790 the Raja rebelled and his estate was confiscated. In 1795 the estate was settled by an Istimarari Sunnud, with Mangaleswari, a sister of Muthuramalinga the old Raja, supplanting his daughter and son-in-law. It

Succession in Ramnad estate.

(1) Collector of Madura *v.* Mootto Ramalinga Settupattey 12 Moore 403

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was held that the incident of impartibility was continued as it was merely a change of the tenant (1). The custom of succession of the old Settupati family, as ascertained by the collector during his enquiry on the occassion, was as follows: (1) the succession first vested in the male line and not in the female line; (2) even if the legitimate son were a mere infant, he ought to be installed, females having no manner of right to the government; (3) in case the Raja left no male issue and his elder or younger sister left a son, the succession vested in that son; (4) if neither the Raja nor his sister left a son, the Raja's son-in-law succeeded; on failure of the heirs mentioned above, the principal Maravars selected one of the nearest relations of the last Settupati from his family and declared him successor."

The Zemindary of Shivagunga and the estate of Padamattur and the Puddokuta were offshoots, being Palayams created by the Rajas of Ramnad. They have all been declared to be impartible.

Succession in Shivagunga.

In the Shivagunga estate also, the question arose whether because of its settlement under a sunnud under Reg. XXV. of 1802, to a younger brother who could not succeed as head of the family, it became ordinary partible property. The Privy Council held

(1) Ramnad case 24 Mad. 613

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ADVANCEMENT OF LEARNING
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that it had been settled before as to a ruler of a district and not merely as to a proprietor and it was impartible notwithstanding the Sunnud. Their Lordships say : "It is suggested indeed that as early as the year 1795, the Directors of the *East India Company*, commended to the Madras Government the principles of land settlement introduced into Bengal by Lord Cornwallis and that one ingredient in that policy was the partibility of estates as is shown by Regulation XI of 1793. The answer is, that the policy of the permanent settlement was applied to Shivagunga, as well other estates ; but that if there was any general intention of introducing the principle of partibility, it was certainly not followed in the present instance. Here the policy of the Government required a ruler with authority in his hands and that was done.

"Moreover though the quality of the estate might doubtless be altered by a law, it was not within the scope of Regulation XXV of 1802 to effect any such alteration. It was framed with a view to the land revenue and not otherwise to infringe on or limit the rights of any body, and in Regulation 4 of 1822, there is a declaration to this effect." (1)

The same considerations will apply to impartible estates granted under sunnuds in

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(1) 8 I. A. 115.

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other parts of India, whether under Bengal Regulations of 1793 or other Acts.

In the above cases the Privy Council laid down that the decision of the question depended on the quality of the estate.

In the case of Periasami v. Periasami (1), though on account of the grant; the estate was considered self-acquired property, the grant was considered to be in the old estate with its incident of impartibility.

Succession in Hansapore Raj.

Another case on the point is what is known as the Hunsapore case. The history of the Raj is given at pages 77 to 79. Raja Futteh Sahee rebelled and was in 1867 driven from Hunsapore by the East India Company's troops to his estates in Goruckpore under the Nawab of Oude. The Raj was for nearly 23 years held by the Company and let out to farmers or kept under its own management. All this time the Raja continued to wage war and in one of his incursions murdered one Bishunt Sahee, who claimed to be a member of a junior branch of the family. On 28th July 1790 the Government ordered that such part of Hunsapore as was the property of Raja Futteh Sahee should be confiscated and should be conferred on Chutterdharee Sahee the surving infant grandson of Bishunt Sahee. The father of Chatterdhàree, Mohesh Dutt had

(1) 5 I. A., 61.

CENTRAL LIBRARY

before been of some service to the Company and had put a claim and proposed that the Raj should be bestowed on him. But though he founded his claim on being the next heir to the Zemindary after the extinction of Raja Futtch Sahee's line. The proceedings that took place clearly showed that it was then considered that any grant to him was matter not of right but of favour. The sons of Raja Futteh Sahee laid a claim to the Raj in 1792 and one of his great-grandsons brought a suit in 1822 which was dismissed as barred by limitation. Upon these facts it was contended that the estate was an ordinary partible estate. The Privy Council held that there was no Sunnud in this case. From the proceedings and correspondence, it was clear that the intention of the Government was not to alter the quality of the estate and that it was a fresh grant of the family Raj to one of the members of the family with its customary rule of descent. But it ceased to be ancestral property and became the self acquired property of the grantee and and the rule succefsion was as to separate Rajes. (1).

Succession in Bettia Raj.

In the Betttia case, Jugolkishore Sing the holder of the Raj, which consisted of the entire Sircar Champaran at the time of the acquisition

(1) Beer Pertab Sahee *v.* Maharaja Rajendra Pertab Sahee, 12 Moore 34, Babu Teluckdharee Sahee *v* Maharaja Rajendra Protaub Sahee, W. R., F B. 98.

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of the Dewany by the company, rebelled and was driven out of the country. In 1789 however, the company divided the estate into two portions and reinstated the Raja Jugolkishore and granted to him the Zemindary of Majwa and Simrown pergunnahs and settled pergunnas Maipisi and Babra to Srikishen Sing and Abdhut Sing. It was held by the Privy Council that, notwithstanding the division and notwithstanding the fact that the reinstatement was as a matter of favour and not of right, the Bettiah Raj was governed by the custom of impartibility, which governed the the old estate but it could not be considered, on account of the new grant, as ancestral and must be considered as self-acquired. It was therefore held that females could succeed to the Raj. (1)

Udayapura Palayam.

In the Udayapura Palayam case, the same principles were laid down and it was held that the acceptance of a Sanad under Regulation 25 did not alter the rule of succession to an hereditary impartible estate. (2)

Succession in Nuzvid estate.

In the Nuzvid case, a different conclusion was arrived at. The Zemindary was formerly part of an old military Jagheer in the nature of a Raj and impartible. In the year 1793 the

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(1) Ramnundun Sing *v.* Janaki Koer 29 Cal. 828 P. C.

(2) Kachi yuva *v.* Kachi Kalyana 24 Mad. 562, affs. 32 I. A., 261 28 Mad. 608. See Sremanta Raja Yarlagadda Mallikarjuna *v.* Srimanta Raja, 17 I. A., 134, 13 Mad. 406.

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old Jagheer was confiscated for rebellion and the next year it was restored on its old footing to the eldest son of the Zemindar. "In the year 1793, it was resumed by Government for default in payment of revenue; and it that state was it when the permanent settlement of 1802 was enacted. It was never again granted out entire or on its old tenure as Jagheer but in the year 1803, two new Zemindaries were made out of it. The larger of these new Zemindaries, called Nidadavolu, was granted to the eldest son of the rebel Zemindar and Nuzvid the smaller was granted to his younger brother. Under these circumstances it was held that the Nuzvid Zemindary could not be identified with any estate or title existing prior to the Sunnud of 1802 which put it on the same footing with ordinary estates." (1) It was held that the Zemindary which was created by Sunnud in accordance with Madras Regulation XXV. of 1802 was partible property governed by the ordinary rules of inheritance. (2)

Succession in Nadadavolu estate.

The Nidadavolu estate also was held to be partible and governed by the ordinary rule of inheritance. (3) But it seems to have been assumed in the case that the estate was partible before. The judges say: "In making

(1) 8 I. A., 112.

(2) 2 Mad. 128, 7 I. A., 38.

(3) Sre Raja Vencata Narasinha *v.* Sre Raja Rangayya, 29 Mad. 437, 7. I. A. 38.

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the regrant to his son the Government did not express any intention to interfere with the quality of the estate in regard to its descendibility to heirs. We take it that in accordance with the principle laid down in the Hunsapore case and affirmed in the Shivagunga case, the regrant would not operate to render it partible, if it was previously impartible and descendible to a single heir. It no doubt rendered the estate the self-acquisition of the new grantee but that would not destroy its character of impartibility, if it possessed that character before the forfeiture (Shivagunga case.)'(1). On the other hand, if it was partible, as we find it was in the present case, there is nothing in the forfeiture and regrant to affect that quality of the estate. The only effect would be that it would devolve as self-acquired and not as ancestral property. There is nothing in the Sanad or in the correspondence at the time to suggest that Government recognized the estate as an impartible one, or gave it to the grantee, with special advertence to the fact that he was the eldest son of the father."

Succession in Belgam estate.

The Belgam Zemindary, which was once impartible has been held, on the construction of the Sanad regranting it, to be partible,

(1) Muttu Uaduganadha Tevar *v.* Dora Singa Tevar 3 Mad. at p. 308.

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because it was similar to that of the Nidadavolu estate (1).

Mirangi Zemindary.

The Merangi Zemindary was originally one held under military tenure from the Raja of Jeypore and was impartible and it was subsequently taken by force and incorporated in the Kurupam Zemindary and afterwards by conquest it became part of the Vizianagram Zemindary which was dismembered in 1795, when it was restored to the old family. In 1802 there was a Sanad grant to the Zemindar Gangaraj in the usual form under Reg. 25. Chandrasekhara son of Gangaraj was sold up in execution of a decree for debt and the Zemindary was purchased by the Government in 1827. In 1835 it was again settled with the son of Chandrasekhara. Under these circumstances it was held that the estate in consequence of the sale became an ordinary partible one on resettlement. (2)

Principles governing cases of regrant.

The principles which can be deduced from all these cases are the following :

(1). After confiscating an impartible estate the Government can regrant it with all the incidents of the old estate or make it an ordinary partible estate.

(2). When the old estate was a partible one, after regrant it remains partible.

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(1) Sre Raja Lakshmi Devi *v.* Sre Raja Surya Narayana, 20 Mad. 256 P. C.

(2) Sre Raja Satrucharla *v.* Sre Raja Satrucharla, 14 Mad. 237 P.C.

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ADVANCEMENT OF LEARNING
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(3). The old impartible character would be presumed to continue, (1) when it was re-granted to a member of the family, especially to the old owner or his heir, (2) when the intention of the Government was to continue the old Raj in all its political and military character, (3) when the intention was simply to change the tenant and not to create a new estate. (4)

(4). The granting of a Sanad or settlement under the Regulations may raise a slight presumption of the creation of a new estate but when from the nature of the quality of an ancient estate and from the circumstances of the new grant it appears that it was not the intention of the Government to change the character of the tenure, the old incidents will continue.

(5). The division of an estate at the time of regrant may lead to a presumption of partibility, when the division is such that it is in reality "the creation of an estate which could not be indentified with the old estate," but when only a fraction of the estate is settled with a stranger but the bulk of the estate is settled with the heir of the old owner and the old estate is intended to be continued no such presumption will arise.

(6). In case of confiscation and regrant the estate loses its ancestral character and becomes the separate selfacquired property of

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the grantee, even though he be a member of a joint family, succession to which is governed by the ordinary rule of succession to separate impartible property.

(7). The same principles would apply when the estate had been sold for arrears of revenue and purchased by the Government and resettled with the intention of continuing the old tenure.

(8). When the estate had been sold in execution of a decree and purchased by the Government or a stranger, it would ordinarily become partible, when no intention was expressed to continue the old estate with its incidents.

(9). In the case of ancient Rajes and military tenures, the regrant, would be presumed to be of the old estate unless the intention was expressed to change its character of impartibility with its incident of succession by the rule of primogeniture. But the circumstances of the grant may be such as are inconsistent with the continuance of the old character of the Raj and to make it an ordinary partible Zemindary governed by the ordinary rules of succession.

Effect of renunciation

When the eldest brother renounces the right to succession for himself and his descendants in favour of the second brother, the estate becomes the absolute separate property of the latter. It was so held in the case of the Polliam of Padamather, which belonged to the family of

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the Zemindars of Shivagunga. (1) Similarly if a junior member gets some property severed from the parent estate, it becomes his separate property (2).

A question of importance arose in what is known as the Tumkohi Raj case, namely whether when the holder of an admittedly impartible Raj migrates to another province and acquires another property, the custom of impartibility will attach to the latter. Raja Fateh Bahadoor Sahi was the Raja of Hoshyarpore (Hansapur) in 1765. He claimed descent from Mayyura founder of the Majhouli Raj by a Bhumihar wife and his descendants are still recognized as connections by the Majhouli family. Refusing to acknowledge British sovereignty tory, he was expelled from Saran and settled in his estates within the territories of the Nawab of Oude. The original Hanspur Raj was settled by the British Government with a junior member of the family. The question arose whether the estates in Oude were partible or impartible. The Allahabad High Court held that the custom of impartibility was a family custom and the family retained it even when it settled in Oude. It further held that the estates in Oude were not subsequently acquired and, even if so acquired, they were incorporated with the old Raj and on the old Raja falling

Effect of migration.

(1) Sivagnana Tevar *v.* Ramasami 1 Mad. 312 P. C.

(2) Pateswar Protap *v.* Rudra Narayan, 1 All. L. J. 543.

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back upon his estates in Oude, those estates were impressed with the custom of imparti-bility. (Sarabjit Partap *v.* Indarjit Partap 27 All 203).

Succession to accumulations and accretion.

I have already given you my opinion about the legal incidents of accumulations and accretions to impartible estates. The question of succession to acquisitions by the holder of an impartible estate is often a very difficult one. These Rajas assume to themselves the character of kings. According to the Common Law of England, the king being a Corporation, purchases of real property made by him after the assumption of the Crown vest in him in his sovereign capacity and descend to his successor, but 'purchases made before the accession to the Crown or descent from collateral ancestors after the accession of the crown vest in a natural capacity' (See Coke upon Littleton 156, note 4), showing that even in England, the monarch could take real as well as personal property in his own right. (1) In England, all real property, as a rule, goes to the eldest son and the personal property is divided among the heirs. In India no such distinction has been made. But the Lawgivers did make a distinction between immoveables and moveables. Over moveables, the holder has full power of disposal even in an inalien-

(1) 7 Moore 497.

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able estate. Land may be impartible and inalienable, but to attach those incidents to other things than what are called the regalia, is going too far. The crown, the sceptre, the jewels, that are worn by the Raja and the Rani, furniture and decorations of palaces, the elephants, the horses, the arms and accoutrements and the like follow the Raj. But how can money accumulated by a Raja be called impartible and inalienable? It would be a just and equitable rule to hold that succession to all acquisitions and moveable properties is governed by the ordinary rules of inheritance. But immoveable properties may be acquired from the income of the impartible estate under circumstances showing that the Raja meant them to be accretions to the Raj. In such cases, they should follow the Raj.

I have told you that the law of acquisition by widows would probably govern the law of acquisition by holders of impartible estates. The law regarding succession to accumulation by widows however, is not quite free from difficulty. In the case of Isridutt *v.* Hunsbutty (1) it was held, that if the widow does not dispose of accumulations during her lifetime, they cannot be considered as her Stridhana and must follow the parent estate. In a later case, (2) the Privy Council made the following observations :

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(1) 10 Cal 324 P. C.

(2) Sheolochan Sing *v.* Saheb Sing, 14 Cal. 387 P. C.

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"*prima-facie*, it is the intention of the widow to keep the estate of the husband as an entire estate, and that property purchased would *prima-facie* be intended to be accretions to that estate. There may be, no doubt, circumstance which would show that the widow had no such intention, and she intended to appropriate the savings in another way." In a more recent case the Calcutta High Court held that the case of Sheolochun *v.* Saheb would indicate, that if there is no presumption of the savings having been accumulated by the widow for the benefit of the next heirs "then you must look to the facts of the case to ascertain what the intention of the parties was with regard to the fund." (1) In Bombay, it has been held that the "existence of debts by the widow rebuts the intention to accumulate." (2) In Madras, Allahabad and Oude it has been recently held that in "the absence of an indication of her intention to the contrary, the widow must be presumed 'to retain absolute control over the investment of the deceased husband's property and the burden of proving the contrary cannot be placed on a purchaser from her." (3)

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(1) Sowdaminy Dassi *v.* Brougton 16 Cal. 574. See however Ramanand *v.* Ramsaran 7 I. C 27 Kulachandra *v.* Bama Sundary 22 I. C. 70.

(2) Rivett Carnac *v.* Jivi Baí, 10 Bom 478.

(3) Akanna *v.* Vinkayya, 25 Mad. 351. (affd. 28 Mad. I.P.C.) Kasinath *v.* Uthumana, 12 Mad. L. J. 1., K. S. Wahid *v.* Tori Ram 35 All. 551 Lal Bahadur., *v.* Sheo Naraun 22 I. C. 903., Jokha Sing *v.* Mussamul Dulari 11. Oude Cas 310.

CENTRAL LIBRARY

It has been held in Allahabad and Madras that if the holder of an impartible estate acquires separate property but does not in his lifetime alienate it or dispose of it by will or leave behind him some indication of a contrary intention, the reasonable presumption is that he intended to incorporate it with the family estate (1).

It is thus sometimes a question of difficulty to ascertain whether accumulations are to be considered as accretion. There is a very great difference between the position of the widow and that of a male holder of an impartible estate. The latter can dispose of the entire property without any legal necessity, which the former cannot. The widow's position is more like that of a trustee than that of a full owner, though as a matter of law, she has been held not to be a trustee for the next heir. A Raja's position is quite different. However, even though acquisition of immoveable property out of the savings of an impartible estate may be considered as accretion to the latter, unless a contrary intention is proved, that rule should not be applied to moveables. Impartibility can be an incident of land only. To make personal property impartible would work very hardly on younger sons, and I know of no rule of law or custom justifying the

(1) Sarabjit Partap Bahadur Sahe, *v* Indarjit Partap Bahadur Sahi 27 All. 203, Laksmipathi *v.* Kandasami 16 Mad. 54, Ramasami *v.* Sundarabagasami 17 Mad. 422 Affd. 26 I. A. 55.

CENTRAL LIBRARY

position that even moveables are impartible, when acquired by the holder of an impartible estate. Having regard to the fact that there may be two different rules of succession governing self-acquired and ancestral properties held by a person (1), there can be no difficulty in holding that succession to moveables belonging to a Raja is governed by the ordinary rule of inheritance, though the Raj may pass to only one among the heirs. In an old case, the Madras High Court held that personal property left by the holder of an impartible property 'whether separately acquired or whether it is an acquisition derived from ancestral property,' was divisible among the heirs, and it seems to me that the rule laid down was a just one. (2)

Decision of the Privy Council on moveables and accumulations.

Since the above was written the Privy Council have held that moveable property and accumulations are taken by all the heirs as partible property (3). In a recent case also, the Privy Council held that when some Mouzas had been purchased out of the savings of the impartible estate and the collections made by the same Raj servants and the collection papers kept with the papers of the Raj, no intention of the Raja was proved

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(1) 9 Moore 539.

(2) Sri Sri Raja Rajeswara Gajapati *v.* Sri Sri Virapratapah Rudra Gajapatty Narain Deo Maharajalunguru, 5 Mad. H. C. 31.

(3) Ekradeswar *v.* Janeswar 42 Cal. 585 at p. 607. See Radhabai *v.* Anantray 9 Bomb. 198.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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to incorporate the Mouzas with the ancestral estate for the purposes of succession, and they must fellow the ordinary rule of the Mitakshara inheritance law as to self-acquired property (1). In two later cases, the Privy Council have however held that immoveable property acquired with the income of an impartible may be considered as an accretion to it and succession to it may be governed by the custom of the parent estate. (2)

Decision of the Privy Council on accretions.

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(1) Parbati Kumari Debi *v.* Jagadis Chunder Dhabal, 29 Cal. 437 P.C. See 20 I. C., 73 P. C.

(2) Ekradeswar *v.* Janeswari 42 Cal. 585 P. C. Ibrahim Ali Khan *v.* Muhammad Ahsan Ulla Khan 39 I. A., 85. See Lakshmipatti *v.* Kandasami, 16 Mad. 59. Sarabji *v.* Pertap Bahadur Sahi *v.* Indarjit Partap 27. All 251 Thakur Johri Sing *v.* Balodeo Sing, 11 I. A. 148.

CENTRAL LIBRARY

LECTURE V.

JUDICIAL PROCEEDINGS ABOUT IMPARTIBLE ESTATES.

Jurisdiction, Evidence of custom, Limitation, Resjudicata.

(a) *Jurisdiction.*

Questions of difficulty have very frequently arisen regarding the jurisdiction of the British Courts to take cognizance of matters affecting sucession to Feudatory and Independent States holding lands in British India and their incidents.

Jurisdiction about succession to feudatory States.

It has been held by the Calcutta High Court that "there is nothing to prevent a foreign or feudatory State from holding land in British India." "The lands they hold in British India follow the succession to the State and is not governed by the British law of succession," and the rule of succession in such State must be given effect to. "That State must be regarded as a quasi-corporation which continues to exist so long as it is recognized as such by the British Government, whatever the rule of succession to it may be and whatever may be its form of Government."(1)

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(1) Hajon Manik *v.* Bur Sing 11 Cal. 17. The United States of America *v.* Wagner 2 Ch., App. 582. Beer Chunder Manikya *v.* Ishan Chander 10 Cal. 136.

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Thus the peculiar rule of succession—a mixture of the rule of female succession and election—was given effect to in respect of lands held in British India by the Cherapunji Raja. Jurisdiction was assumed by the Court on the ground it was a suit for possession of land in British India and that "a foreign State may sue in British Courts to enforce private rights against private individuals, even in respect of land, in suits by the plaintiff as head of a State" (1).

Section 84 of the Civil Procedure Code provides that "a foreign State may sue in any Court in British India: provided that such State has been recognized by His Majesty or by the Governor-General in Council: Provided also that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his private capacity." Section 85 provides who can sue for such States. Section 86 provides for suits against such States. It says: "Any such Prince or Chief and any ambassador or envoy of a foreign State may, with the consent of the Governor-General in Council, certified by the signature of a Secretary to the Government of India, but not without such consent, be sued in any competent Court." Such consent however, it is provided, shall not be given unless that State has already brought a suit

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(1) Emperor of Austria *v.* Day 33 L. J. 690.

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against the person desiring to sue him or trades within the limits of the jurisdiction of the Court or "is in possession of immoveable property within those limits or is to be sued with reference to such property or for money charged thereon."

Thus a suit may be brought for possession of land situate in British India in the Court within the jurisdiction of which the property is situate. But can such Court in British India decide a question of disputed succession? In regard to the Tippera Raj succession such questions have very frequently come before the Courts.

In the case of Neelkristo Deb *v.* Beer Chunder Manikya, the Privy Council did decide the question of succession in respect of the Tippera State assuming jurisdiction in respect of the Zemindary it held within British India (1). In the case of Nobodip Chunder *v.* Raja Bir Chunder, the High Court held that a question of "succession in respect of the Tippera Raj is beyond the jurisdiction of Civil Courts and the Courts would accept the title of the Raj of the person recognized as Raja by the British Government. But in respect of a Zemindary not an appanage to the Raj the Courts had jurisdiction." (2) The matter was thus in a rather unsettled state and in a very

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(1) 12 Moore 532. (2) 25 W. R., 404.

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recent case, it was referred to a Full Bench of the Calcutta High Court. The Full Bench held that the Civil Courts had no jurisdiction in matters of succession to the Tippera State or to its Zemindary in British India. (1) In the Privy Council case of Neelkristo Deb *v.* Beer Chunder Manikya (12 Moore 532), the Full Bench was of opinion "both parties had submitted to the jurisdiction of the Courts with the sanction of the Government" and the Government withheld its recognition of the ruling Chief until the determination of his title by the Privy Council. It was also held that an order appointing a Yuvaraj by the ruling Chief with the sanction of the Government could not be questioned in the Civil Courts. Succession to estates in British India follows the succession to the Feudatory State to which it belongs.

Succession to estates in British India.

In a very recent case the Privy Council have held that a question of succession of the lands in British India held by the Chief of Tank could not be gone into by the Civil Courts and the orders of the Government in respect of it could not also be challenged, as they had been passed in its political capacity (2). Questions about the maintenance of junior members of the family of the reigning Chief, who holds lands in British India, cannot also be entertained in British Courts (3).

No jurisdiction to entertain suits relating maintenance of members of family of heads of Native States.

(1) Samarendra Chundra Deb *v.* Birendra Krista 35 Cal. 777. (2) Ibrahim Ali Khan *v.* Muhammad Ahsan Ulla Khan, 39 I. A. 85. See also In re the Nawab of Surat 5 Moore 499, the East India Company *v.* Syed Ally 7 Moore. 555. (3) Maharaja Bir Chunder Manikya *v.* Ishan Chunder 3 C. L. R. 417. Hajon Manik *v.* Beer Sing 11 Cal. 17.

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No jurisdiction to question propriety of acts of Government in its sovereign rights.

It was held by the Privy Council that, when the East India Company in the exercise of their sovereign rights obtained by treaty resumed certain Jaghire in the Carnatic, the Courts had no jurisdiction to question its propriety (1). In the matter of the administration of the estate of the Nawab of Surat provided by treaty and by an Act of Legislation, when the members of his family asked the Civil Court to decide the question of the propriety of an order of the Government in regard to the distribution of his property, the Privy Council held that it had no jurisdiction.

The Privy Council however, made the following observations in the Nawab of Surat's case about the exercise of such administrative and political powers by the Government of India : "In the extreme case which may be supposed of corrupt or tyrannical abuse of such powers there must always be open to all the Queen's subjects those rights of complaint, in the last resort either to Parliament or to the Crown." (2). In a very recent case the Privy Council held that Courts of equity can grant relief by way of injunction against the person, who has been paid by the Government a pension or a sum of money in its executive capacity, though the action of the Government cannot be questioned (3).

When and how can acts of Government be questioned.

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(1) East India Company *v.* Syed Ally 7 Moore 555. (2) 5 Moore 509. (3) Eastern Trust Co. *v.* Mckenzie Mance 84 L. J. P. C. 152, 20 C. W. N. 157.

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Jurisdiction of Civil Courts about resumption appointment and dismissed in respect of Vatans, Ghatwalis, inamdars &c

The question of the jurisdiction of Civil Courts about resumption and the appointment and dismissal of holders of Ghatwalis, Vatans and Inams is a matter of some difficulty. It has been dealt with in pages 207 to 209. As regards Vatans, in the latest case on the question, it has been held that Civil Courts have jurisdiction to make a declaration under Act III of 1874 (Bombay), that a person is the nearest heir of a deceased Vatandar and has a right to have his name entered in the Collector's register in respect of the Vatan as the representative of the eldest branch. (1)

(*b*) *Custom and its evidence.*

Custom.

In judicial proceedings regarding impartible estates, the most important matter for consideration is the evidence of customs which govern them. There is a certain misapprehension very general among lawyers and text-writers about the validity of customs under the Hindu Law. It is therefore necessary to consider the history of the law of custom among ancient Hindus in order to make the matter clear.

Ancient Hindu Law about custom.

The law of custom has a very interesting history in Hindu law. The laws of the Hindus are based on ancient custom. But from time

(1) Shankar Babaji *v.* Dattatraya 40 Bom. 155. Rahimkhan *v.* Dadanuya 34 Bomb. 101. Dalpat *v.* Prenja 4 Bomb. L. R. 1342. See Contra, Raji *v.* Gena 22 Bomb. 344.

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before the Vedas, we find that they had been intermixed with religious rules and clarified into a code by Manu and other Rishis, some of whom are supposed to have existed in very remote times and to have formed the constellation of stars called the Saptarsi. Custom could therefore have no place in the law of the Hindus. Where the books are silent, and in doubtful matters, the opinion of an assembly of learned and good men was to prevail. That was the orthodox view. The law of the sages was, however, meant for the pure Aryans, the three twice-born classes, for whom rules for the guidance of every act of life from "procreation to death," were strictly prescribed in the books. The only exception to the rule was that the customs of guilds of artisans and merchants and of the lower classes were recognized as fit to be given effect to. Again, the Aryans were then a conquering race and the Lawgivers ordained that the customs of conquered races should not be disturbed. But no custom when it was opposed to morality or public policy or abhorred by the people could be enforced. This was the orthodox view of the validity of customs.

Mimansa on custom.

Colebrooke's translation of the passages of the Mimansa on the subject runs as follows: "Besides the evidence of precept from an extant revelation or recorded hearing (Sruti) of it, another source of evidence is founded on

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the recollections (Smriti) of ancient sages. They possess authority as grounded on the Vedas, being composed by holy personages conversant with its contents, nor was it superfluous to compose anew what was there to be found, for a compilation, exhibiting in a succint form that which is scattered through the Veda, has its use. Nor are the prayers that the Smriti directs unauthorized for they are presumed to have been taken from passages of revelation not now forth-coming. Those recollections have come down by unbroken tradition to this day, admitted by the vituous of the three tribes. and known under the title of Dharma Sastra, comprising the institutes of law, civil and religious. Nor is error to be presumed which had not, until now, been detected. An express text of the Vedas, as the Mimansa maintains, must then be concluded to have been actually seen by the venerable author of a recorded recollection (Smriti).

But if contradiction appears, if it can be shown that an extant passage of the Veda is inconsistent with one of the Smriti, it invalidates that presumption. An actual text present to the sense, prevails before a presumptive one.

Or though no contrary passage of the Veda be actually found, yet if cupidity or other exceptional motive may be assigned, revelation

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is not to be presumed in the instance, the recollection being thus impeached.

Usage generally prevalent among good men and by them practised understanding it to be enjoined and therefore incumbent on them, is mediately, but not directly, evidence of duty, but it is not valid, if it be contrary to an express text. From the modern prevalence of any usages, there arises a presumption of correspondent injunction by a holy personage who remembered a revelation to the same effect. Thus usage pre-supposes revelation. Authors, however, have omitted particulars, sanctioning good customs in several terms, but any usage which is inconsistent with a recorded recollection is not to be practised so long as no express text of scripture is found to support it." (1)

But notwithstanding all the pretensions of the sages to having established one uniform religious code for the three twice-born classes, customs, of which traces are found in the Vedas like the elegibility of paternal and maternal aunt's daughters for marriage which had been abrogated in the Lawbooks, were still found among Brahmins who had gone to the south of the Vindhya Hills. The laws were codified, it thus appears, in northern India long after southern India had been

(1) Colebrooke's Miscellaneous Essays pp. 337, 338.

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conquered and settled by the Aryans. There was a great divergence of opinion among the Lawgivers about the validity of such customs among the twice-born classes, which were against their teachings. Gautama declared them to be invalid. Baudhayana seemed to agree with Gautama. Virhaspati recognized them. But whether recognized by the law-givers or not, the customs did not cease to exist and they still exist. Marrying a deceased brother's widow existed till very recent times in Orissa and still exists in the Himalayan regions. However that may be, it lay with the king to abrogate a custom, if it were immoral or opposed to public policy. That is the view of all the Lawgivers. According to the Lawgivers, therefore, the following customs are valid.

Rules of Smritis on custom.

1. Customs of cultivators, artizans, money-lenders, companies of tradesmen, dancers and ascetics.

2. Ancient customs of provinces, castes and families of peoples other than the Aryan Hindus of the twice-born classes. Certain marriage customs of the south are recognized. Excepting these, no customs against the teaching of the Smriti are allowable.

3. Family customs may be valid when not opposed to the Smritis, among the three twice-born classes.

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4. No customs that are considered immoral, opposed to public policy or abhorred by the people should be given effect to.

The customs of provinces, families &c, mentioned by the Lawgivers probably did not refer to impartible estates. As I have said before, impartible estates strictly speaking are estates attached to the office of the king and other public servants and managers of endowments. This is an idea of lawyers of later growth. It is the feudal system and the military tenures, to which we should properly look for the incidents to impartible estates. The customs about these estates which we find mentioned in the Puranas are the customs of the great royal houses, like those of the Raghus and the Kurus, and in modern times we have the feudal customs of the Sesodias and the Rahtores "all sons of the same father." The Ramayana speaks of the custom of the family of Raghus. Now to apply the customs of Raghus to the descendants of men who by robbery or chicanery in times of political changes acquired large properties, would have raised the smile of the ancient Hindu commentators, though modern Pundits and Mahamahopadhyayas would invent texts as applying to their cases and trace their descent from the sun or the moon. Indians, in the absence of authentic history, place events 200 years old and 5000 years old on very much the same

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footing. All events the origin of which is little known, are made to appear as ancient as the great deluge. In this state of thing when the authentic history of a family is unknown and very often purposily falsified, the Courts are left to the ordinary rules about customs.

Blackstone of custom.

Blackstone lays down the following rules about a valid custom which should be known to you :—

1. "It must have been used so long, that the memory of man runneth not to the contrary, which being interpreted means, that it must be proved to date at least from the commencement of the reign of Richard the First, either by positive evidence or by a legal presumption arising out of proof of suffiicient antiquity in the absence of proof to the contrary.

2. A custom must have been continued, or in other words, it must have been uninterrupted in its operation.

3. It must have been peaceable and acquiesced in.

4. It must not be unreasonable ; it will be good if no good legal reason can be assigned against it.

5. A custom ought to be certain, or in other words capable of being ascertained ; for in law, id certum est quod certum reddi potest.

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6. A custom must be compulsory and not left to the option of every man, whether he may use it or no.

7. Customs must be consistent with each other, one custom cannot be set up in opposition to another.

8. A custom in derogation of the general law must be construed strictly ; and lastly.

9. No custom can prevail against an express Act of Parliament."

The custom of impartibility, it should be understood, is, according to Hindu ideas, so far as principalities are considered, not attached to the estate but is Kulachar or custom of the family. It may be otherwise in the case of lands attached to offices.

The Courts have always expressed great reluctance to allow the usages of families of no importance in derogation of the general law. In Basantrav *v.* Mantaffa (1 Bom. H. C. 43), the Judges said that it would be a dangerous doctrine that any petty family should be at liberty to make a law for itself. Aain in a case (Tarachand *v.* Reebram, 3 Mad. H. C. A.J. 50) the principles laid down in which have been recently set aside in other respects, the Judges said, " the authors who deal with this subject, are all discussing customary law as applicable to a whole community or a large section of it. They would never have conceived it possible for a customary law an-

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tagonistic to the general law to be established by evidence of the acts of a single family confessedly subject to that general law. There are now three generations of this family, and we entertain as little doubt upon principle as upon authority that no evidence of their acts or opinions could establish what could not be law but an anomaly." In a later case, the Bombay High Court went further and held that no evidence of the acts of a single family repugnant or antagonistic to the general laws will establish a valid custom (Madhavrao *v.* Balkrishna, 4 Bom. H. C. Rep., 113 A. C. J.). But all these decisions have been modified by more recent decisions, which have established the rule that the custom of a family may be given effect to if it is properly established. The Privy Council have thus laid down the law: "A custom is a rule which in a particular family or a particular district has from long usage obtained the force of law" (1). Again in another case they say: "Their Lordships are fully sensible of the importance and justice of giving effect to long established usages existing in particular districts and families in India, but it is of the essence of special usages modifying the ordinary law of succession that they should be ancient and invariable, and it is further essential that they should be established to be so

(1) Ramasahay *v.* Balmukund, 3 I. A. 259.

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by clear and unambiguous evidence. It is only by means of such evidence that the Courts can be assured of their existence and that they possess the conditions of antiquity and certainty in which alone the legal title to recognition depends." (1) Again their custom must be proved to be "certain, invariable and continuous." (2)

We have already seen how under the Muhammadan rule the large Zemindaries usually went to one person. The conditions under which Zemindaries have come to be held since the permanent settlement are essentially different from those under which they were held during the Muhammadan times. There can thus be no presumption now of impartibility as regards large Zemindaries. Shama Charan Sircar [in his Vyavastha Darpana p. 19 (footnote) 2nd edition], says that 'the effect of the Bewasta and the judgment in the old Sudder Dewany case of Ishanchand *v.* Issurchunder Roy, (3) is to clothe huge Zemindaries with the attributes of principalities.' That position was the result of the confusing of the old state of things with the new, which came into existence with the permanent settlement. It has been authoritatively held

No presumption that large estates are impartible.

(1) Ramlakshi *v.* Sivanath, 14 Moore 570.

(2) Rajkissen *v.* Ramjoy, 1 Cal. 186 P. C.

(3) S. D. A. R. Vol. I, p. 2. Colebrooke in a note to the Digest (Vol II p. 119) says that great possessions called Zemindaries in official language are considered by modern Hindu lawyer as tributary principalities—Main Hindu Law Vol. p 18, Note.

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by the Privy Council that there is no presumption that an estate if very large is impartible (1).

Effect of the Regulations.

Regulation 11 of 1793, after reciting that by a custom originating in considerations of financial convenience was established in these provinces under the native administration according to which some of the most extensive Zemindaries were not liable to division, and upon the death of the proprietor of one of these estates, it devolved entire to the eldest son or next heir of the deceased to the exclusion of all other sons and relations, enacted by Section 2 that after the 1st of July 1794, "if any Zemindar should die without a will or without having declared by a writing or verbally to whom and in what manner his or her landed property was to devolve after his or her demise and should leave two or more heirs, who by the Mahomedan or Hindu Law might be respectively entitled to succeed to a portion of the landed property of the deceased, such persons should succeed to the shares to which they might be so entitled." It was also enacted by Sections 5 and 6 that nothing in the said Regulation should divest a person who might have succeeded to an undivided estate by custom prior to 1st July 1794.

On 1st December 1900 by Regulation

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(1) Zemindar of Merangi *v.* Sri Raja, 18 I. A. 45. Sremantu *v.* Sremantu, 17 I. A. 134

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X of 1800 it was enacted that Regulation II. of 1793 "shall not supersede or affect any such established usage which may have obtained in the Jungle Mahals of Midnapur or other Districts and that in the Mahal in question the local custom of the country shall be guided by it in the decision of all claims which may come before them in the inheritance of landed property situated in those Mahals.

The Privy Council in the case of Raja Deeder Hossen *v.* Rani Zuhooroon Nessa (2 Moor 441) held in respect of the Zemindari of Surjapur, which had been held by a Mahomedan family and had descended by the rule of primogeniture for fourteen generations, that a custom of impartibility if any was abrogated by Regulation II of 1793 and that it was unaffected by Regulation 10 of 1800 which only applied to the Jungle Mahals.

Since then the Privy Council have held that notwithstanding Regulation 11 of 1793, the ancient Zemindaries in the Provinces of Bihar, Chotanagpur and Orissa, which were originally in the nature of principalities or military tenures would be governed by the custom of impartibility if sufficiently proved.

In Bengal such a question about large estates never came for decision before the Privy Council. The Zemindaries appertaining to the States of Tippera and Cooch Bihar are surely governed by the custom of principalities

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and so are some political states in the Khasia Hills. The rule of descent in the Bijni Raj has not yet been finally adjudicated upon. The Dinajpore Raj claims to have been originally a principality. The large estates of Putia, Taherpore, Natore, Burdwan and Krishnagar may claim to have been ancient impartible estates. The smaller estate of Chandradwipa, the titulary Rajas of which claim unbroken descent from pre-Muhammadan Kings of Bengal, as well as the estate of old Jessore, which has come down to the descendants of Pratapaditya, who set up an independent kingdom, have long ceased to be impartible estates and so has the ancient military tenure of Susang. The other estates though large were originally Zemindaries. There has been no division in them, because there never was any occasion for it, as the Rajas very often left only adopted sons to succeed to them.

Rule laid down by the Privy Council

The Privy Council have construed the above Regulations and it is now finally settled that notwithstanding the permanent settlement of estates under the Regulation, those Regulations are not applicable to the succession of a well-established Raj, Polliem, Vatan or other tenure which is impartible by custom or to succession to an estate held by a family, in which by long established custom the rules of primogeniture and impartibility prevail (1).

(1) Baboo Beer Pertab *v.* Maharaja Rajender, 12 Moore I, Babu Gonesh Dutt Sing *v* Maharaja Moheshar Sing, 6 Moore 164, Kachi Kaliyana *v.* Kachi Yuva, 32 I. A. 261.

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Except in the case of military tenures and other estates attached to offices in Muhammadan times, only large Zemindaries, Rajes and Polliams and the like were impartible. But modern cases have established that other estates, even if not large, may be impartible.

Small estates may be impartible by custom.

In the case of Chowdhury Chintamon Sing *v.* Mussamut Nowlukho Kunwar (2 I. A. 263; 24 W. R. 255) their Lordships laid down the following rule: "It seems to their Lordships too late to question what is affirmed by many reported cases that a custom of descent according to the law of primogeniture may exist by Kulachar or family custom, although the estate may not be what is technically known either as a Raj in the north of India or a Polliam in the south of India." (1)

Custom of impartibility of three kinds.

The custom of impartibility may be of three kinds. The first is a territorial custom which is the *lex loci* binding all persons within the local limits in which it prevails; the second is a custom attaching to a tenure as one of its incidents; the third is a family custom (2). In regard to the last, it is clear and it has been so held by the Privy Council that it is of a nature which can without any violation of law be put an end to and there appears to be no principle or authority for

Family custom can be put an end to.

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(1) See Bhau Nanaji Utpat *v.* Sundrabai, 11 Bom. H. C. 249. Mullikarjuna *v.* Durga, 13 Mad. 406; 17 I. A. 134. Nitra Pal *v.* Joy Pal, 19 All. 1, 24 I. A. 147.

(2) Raja Deedur Hossein. v. Ranee Zuhooroon Nissa 2 Moore 441. Raj Kissen Sing. *v.* Ramjoy 1 Cal. 186 P.C.

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holding that a manner of descent of ordinary estate depending solely on family usage may not be discontinued either accidentally or intentionally (1)

What is immemorial custom.

The question next arises what length of time will raise the presumption of an ancient immemorial custom.

The Mitakshara Part I, Ch 3, Sec. 6, Para. 8 lays down the following rule: "The period of one hundred years is defined to be within the memory of man from the text "the age of man extends to one hundred years." Apararka in his commentary on the same text of Yajnavalkya (Book II. 27) treats a period beyond three generations or 105 years as time immemorial. There is also a text cited in the Apararka showing that 60 years may be considered as time beyond the memory of man.

Grotius considered one hundred years as time immemorial on the same ground as Vijnaneswara. He says: Quia vero tempusmemoriumexedens quasi infinitum est memoraliter; ideo ejus temporis silentium adrei delicturae conjecturam sempersufficere videbitur, nisi validissimae sint in contrarium rationes. Bene atuem notandam est a prodentiovibus juris consultis non plane idem esse tempus memoriam excedens cum centenario quanquam saepe haec

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(1) Raj Kissen Sing *v.* Ramjoy 1 Cal. 186.

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non longe abeunt, quia communis humanæ vitæ terminus sunt anni centum, quod spatium ferme solet ætatis hominum aut geneastres efficere; quas Antiocho Romani objiceibant, cum ostenclerent repeti ab es urbes quas ipse pater, avus nonquam usurpassent. (Grotius Lib. 2, Cap. IV. 7.)

In an early case the Privy Council made the following observations on the question: "In theory, indeed being an exception from the general rule, custom must be of origin as ancient as the law itself. But our Courts though they have refused to recognise the custom of a family which dates from a comparatively short time (1), have presumed an ancient valid usage on proof of its existence as an uniform custom for a sufficient length of time." (2)

In Jugmohun Ray *v.* Nimu Dasi (Montrou 596), Chief Justice Grey made the following observations: "Although in this country we cannot go back to that period which constitutes legal memory in England *viz.*, the reign of Richard I., yet still there must be some limitation without which a custom ought not to be held good. In regard to Calcutta, I should say that the Act of Parliament in 1773 which established this Supreme Court, is the period to which we

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(1) Umritnath *v.* Gowreenath, 13 Moore 542. Bhau Nanaji *v.* Sundrabai, 11 Bom. H. C. 249. Benimadhub *v.* Joykrishna, 7 B L.R. 152.

(2) 2 I. A. 147.

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must go back to found the existence of a valid custom, and that, after that date, there can be no subsequent custom nor any change made in the general law of the Hindus, unless it be by some Regulation by the Governor-General in Council which has been duly registered in this Court. In regard to the Mufassil we ought to go back to 1793. Prior to that there was no registry of the Regulations and the relics of them are extremely loose and uncertain. I admit that a usage for twenty years may raise a presumption in the absence of direct evidence of a usage existing beyond the period of legal memory." In a recent case the Privy Council laid down that in certain cases a custom proved to have existed since 1793 may be considered as immemorial, and even evidence of unbroken custom for 80 years since the British occupation of a province has been held to be sufficient (1).

Essential attributes of customs.

In a very recent case (2), Mukerji, J. discussed this question of immemorial time and considered the essential elements of valid custom in connection with it. He said: "The essential attributes of valid custom were specified by Tindal C. J. in Tyson *v.* Smith (3) in these terms: "a custom be reasonable; thirdly, it must have continued

(1) Gararudhwaja *v.* Saparandhwaja, 27 I. A. 238, 23 All. 37.
(2) Mahamaya Debi *v.* Haridas Halder, 20 Cal. L. J. 192-194.
(3) (1838) 9. Ad. & El. 406.

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without interruption since its immemorial origin; and, fourthly, it must be certain in respect of its nature generally, as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect." See also Hurpershad *v.* Sheo (1) Raja Vurmah *v.* Ram Vurmah (2) Lutchmeeput *v.* Sadaulla (3) and Ghasiti *v.* Umrao (4). In the case before us the custom obviously satisfied the first, third and fourth requirements. The time when the custom originated is unknown; all that has been ascertained is that as far as the evidence can be carried back, it has been in existance. This takes the case out of the rule formulated by Willes J. in London Corporation *v.* Cox (5), that "a custom originating within time of memory, even though existing in fact, is void at Law." There is no force in the contention that the proof of the existence of the custom should have been carried back by direct evidence to 1793 when the first Regulations were passed by the Indian Legislature, if not to the year 1773 when the Supreme Court was established. It is well settled that evidence showing exercise of a right in accordance with an alleged custom as far back as testimony can go, raises the presumption, though only a

(1) (1876) L. R. 3 I. A. 259.
(2) (1876) L. R. 4 I. A. 76.
(3) (1882) I. L. R. 9 Cal. 698.
(4) (1893) I. L. R. 21 Cal. 149.
(5) (1867) L. R. 2 H. L. (239 259).

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rebuttable presumption, as to the immemorial existence of the custom. As Tindal C. J. said in Bastard *v.* Smith(1) : " you cannot reasonably expect to have it proved that the custom did in fact exist before time of legal memory ; but you are to require proof, as far back as living memory goes, of a continuous peaceable, and uninterrupted user of the custom." To the same effect is the observation of Farwell J. in Mereer *v.* Denne (2) " not only ought the Court to be slow to draw an inference of fact which would defeat a right that has been exercised during so long a period as the present, unless such inference is irresistible, but it ought to presume every thing possible to presume in favour of such a right. * * In any event, it is well-settled that if the existence of the custom has been proved for a long period, the onus lies on the person seeking to disprove the custom, to demonstrate its impossibility. * * It is indisputable that if a custom be against reason, it has no force in law ; but as explained in Co. Litt 62a, the reason here referred to is not to be understood as meaning every unlearned man's reason but artificial and legal reason warranted by authority of law ; or as Blackstone puts it (commentaries Vol. I, Page 77) "it is sufficient if no good legal reason can be assigned against it." When however it is said that a custom is void because it is

(1) (1837) 2 Moody *v.* Ryan 136. (2) (190) 2 Ch. 5516.

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unreasonable, nothing more is meant than that the unreasonable character of the alleged custom conclusively proves that the usage, even though it may have existed from time immemorial, must have resulted from accident or indulgence and not from any right conferred in ancient times: Salisbury *v.* Gladstone (1). It is also well settled that the period for ascertaining whether a particular custom is reasonable or not, is the time of its possible inception; this is in accord with the observation in the Tanistry case (2), "the commencement of a custom (for every custom hath a commencement, although the memory of man doth not extend to it, as the river Nile hath a spring although geographers cannot find it) ought to be upon reasonable ground and cause, for if it was unreasonable in the original, no usage or continuance can make it good. Quod ab initio non valuit tractu temporis non convalescet."

Since customs in general involve some inconsistency with the general common law of the realm or are contrary to a particular maxim, the fact of this inconsistency is not of itself a ground for holding the custom unreasonable and bad. Tyson *v.* Smith (3). Thus in the Tanistry case (4), it is said that "several customs which have been adjudged

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(1) 9 H. L. C. 692.

(2) (1608) Davis 29.

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void in our books as being unreasonable, against common right or purely against law if their nature and quality be considered, will be found injurious to the multitude and prejudicial to the commonwealth." To the same effect is Co. Litt 113a: Consuetudo ex certa causa rationabili usitata privat communem legem."

Even in the case of large Zemindaries there is no presumption of impartibility and the party setting up a custom of impartibility or inalienability of a Zemindary or an Inam or other estate must prove it. (1)

Burden of proving custom.

It has been held that well-established discontinuance of a valid custom may destroy it. (2) It was thus that the Susung Raj which was a military grant and an impartible estate came to be held as a partible one. When such discontinuance is pleaded, the burden of proving it is on the party pleading it. Such discontinuance cannot be established by one instance in which a widow usurped the family property and then by way of compromise made a gift of it to the rightful heir (3).

Burden of proving discontinuance of custom.

The question of partibility has been held to be a mixed question of law and fact (4).

Question of custom of impartibility mixed question of law and fact.

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(1) 30 I. A., 77.

(2) Ram Kissen *v.* Ramjoy, 1 Cal. 186. Surendra Nath Roy *v.* Mussamut Heeramonee Bormonea 12, Moore 81.

(3) Sarabjit Partap *v.* Indarjit Partap 27 All. 203.

(4) 3 Mad. 290 P. C. 25 Mad. 678 P. C. 32 Bomb. 59; 25 All. 468 P. C. 27 Mad. 300 F. B. 11 Bomb. 285 F.B.

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It is often a question of difficulty to ascertain what evidence is admissible and sufficient to prove the custom of impartibility and lineal primogeniture.

Admissible and sufficient evidence of custom.

'When an estate has remained undivided for six or seven generations and descended as an impartible estate to a single heir, that fact is not sufficient to raise a presumption of unbroken family custom, which could not be rebutted by evidence that may be tendered to show earlier partitions of the family, whereby a larger estate had been broken up into several smaller portions.' 'When there is no evidence of enjoyment by a single member of the family for six or seven generations, and all that is proved is that during that period the estate had never been divided, the fact is not sufficient to control the operation of the rule of Hindu Law' (1).

In the case of Nitra Pal Singh *v.* Jaipal Sing (19 All. 1), the evidence of impartibility on the record fell under the following heads: (a) "that the family was ancient and noble and had been in possession of the property for many generations; (b) the family property had never been the subject of partition; (c) the heads of it ascertained by primogeniture had been installed on the Gaddi with public ceremonies; (d) the first claim for partition by

(1) Thakur Durryao Sing *v.* Thakur Dari Sing, 13 B. L. R. 167 P. C.

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a younger son had been defeated in 1845; (e) the property had been enjoyed by the head of the family as sole owner; (f) the members of the family with the exception of the actual claimants for partition declared their belief in the custom of primogeniture; (g) there was substantial evidence to the same effect among their kinsfolk." The Privy Council reversing the decision of the High Court held that though any one of the above heads of evidence would not prove impartibility, all taken together established the custom.

In a recent case,(1) the Privy Council made the following observations:

"The High Court relied on the oral evidence which was very fully discussed in the Court of first instance. There was abundant evidence to show that it was well understood in the family and in families belonging to the same group that no descendant of a younger branch could take until all the elder branches were exhausted. But there again no witness was able to point to an actual instance in which in case of collateral relationship, the rule had either been followed or departed from. The evidence would have been much stronger if the witnesses had been able to cite instances confirming their view. But still the evidence is not to be disregarded.

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(1) Mohesh *v.* Satrughan, 29 Cal. 534.

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"The High Court replied principally on certain decrees relating to disputes in families belonging to the same group of families, in which it was decided that the rule of succession was lineal primogeniture. These decrees do not of course bind the parties to the present, but they go a long way to show the prevalence of the custom among families having a common origin and settled in the same part of the country.

"Lastly the High Court relied on the precedence conferred or marked by the titles of honor given to the sons of the reigning Raja in order of seniority—a precedence which would naturally be attached to lines of descent traced from them. All these various considerations point in one direction and in one direction only," *i. e.* the custom of lineal primogeniture.

The Privy Council have held in a recent Orissa case that though in Cuttack and other parts of the country holders of offices like Chowdhury claim impartibility of their estate, such a custom did not exist during the native rule and that every time succession opened out in the particular case before the Board, there was litigation by which the younger brothers got more than what they would be entitled to as maintenance and that under such circumstances no valid custom of impartibility was proved (1). In this case the sons of holders were called by custom by such honorific

(1) Romakant *v.* Shamanued 36 Cal. 590 reversing 32 Cal. 6.

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titles as Phukan and Paharaj, as are usual in the case of sons of holders of impartible estates. But this circumstance was certainly not sufficient.

Custom found to prevail in one branch of a family is strong evidence of a similar custom in another branch (1). Oral evidence, even opinions by Rajas of the same group of families, and judgments not *inter partes* in families of the same group are thus evidence of the custom of impartibility under circumstances mentioned above. Oral evidence.

As to hearsay, the Privy Council have laid down, that "it is admissible evidence for a living witness to state his opinion on the existence of a family custom, and to state as the grounds of that opinion information derived from deceased persons, and the weight of the evidence would depend on the position and character of the witness and of the persons on whose statements he has formed his opinion. But it must be the expression of independent opinion based on hearsay and not mere repetition of hearsay." But such evidence must be corroborated by proved facts, such as the mode of descent of the estate for a long period of time. Otherwise much reliance should not be placed upon such evidence standing alone (2). Evidence of the custom of Gaddinashini or Masnadinashini and receiving nuzzur on such Hearsay

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(1) Lal Ganendra Nath Sahi *v.* Lal Mathur lal I Pat. L. J. 106.
(2) Garuradhwaja *v.* Saparandhwaja, 27 I. A. 251.

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occasions has been held as good evidence of impartibility (1).

Statements of deceased persons.

Statements of deceased persons who had special means of knowledge by reason of their relationship or connection with the family may be evidence but if they were made after a controversy as to the custom has arisen, they are not admissible. (2) Wajib-ul-Arzes have been held to be admissible in evidence of the existence of a custom (3).

Historical accounts, books and records

Historical Accounts published under the authority of the Government such as the Historical Account of the N. W. Provinces edited by Mr. E. T. Atkinson or books such as "the Rajas and Nawabs of the N. W. Provinces" published under the authority of the Government in 1877 or books like 'Manual of Titles' were considered good evidence in a case about the custom of the Rajas of Basti. It was held on their authority that the Rajas belonged to the same stock of Kulbans Rajputs as those Rasulpore Rajas who were extinguished by the house of Bansi and that the Raj was founded in the fourteenth century. (4) The Statistical Accounts published by the Government have always been considered as admissible in evidence. Ancient books, if their authenticity is proved, and standard historical works, such as Tod's Rajasthan, Ward's Account of the Hindoos, Steele's Summary,

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(1) Thakur Nitrapal *v.* Thakur Jaising, 23 I. A. 147. See 27 I. A. 251.

(2) Ekradeswar *v.* Janeswari 42 Cal. 582 P. C. (3) 16 C. W. N. 133 P. C., 31 All. 457, 26 Cal. 81, 92, P. C. (4) Pateswari Pratap. *v.* Rudra Narain 1 All. L. J. 545.

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of the Law and customs of Hindoo castes and Sterling's Orissa, have been constantly referred to by the Courts in India and by the Privy Council. (1) Entries in the books of hereditary Barots and Bhats attached to ruling princes have been sometimes admitted in evidence as proof of custom. These records are described by Forbes in the Ras Mala as being recognized for their accuracy and truthfulness among Rajput clans of Kathiawar (Agar Singh *v.* Bai Nuniba' 17 Bom., L. R. 273, 28 I. C. 532.) But the weight to be attached to all such accounts, books and histories depends upon circumstances.

Custom how proved.

A family custom in derogation of the ordinary law can not be supported on slender evidence of a few instances of modern date (2). Custom must be proved in each particular case and even proof in one or two cases, though such proof is good evidence, will not dispense with the necessity of its being proved in a subsequent case (3).

It must be found that the custom was before contested and finally accepted by persons claiming under it, (4) concensus acceptance of a custom having the force of law being

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(1) Secretary of State *v.* Santaraja Shetty 21 I. C. 432. Chuoturya Run Murdun *v.* Saheeb Purhulad 7 Moore 46.

(2) Mussamonut Jamna *v.* Chuni 4 Punjab 329 See 29 I. A. 70.

(3) Re Parker Exparte Turquod 1422 ; B. D. 636 Southwell *v.* Bowditch 35 L. J. 196 Moult *v.* Halliday (1898) 1222 ; B. 125.

(4) Ramanund *v.* Surgimani 16 All 221.

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considered as the characteristic of genuine custom (1).

Custom and the Oude Act.

It is a question of some difficulty whether the custom of succession to an impartible estate may be superseded or modified by the terms of a Sanad accepted by a holder under the Oude Estates Act. It appears there were two classes of Talukdars. The first was that of the old Talukdars, whose taluks were not confiscated, and the second was that of the new grantees of confiscated taluks. Now some of the talukdars accepted Sanads in which it was mentioned that succession to their estates was governed by the rule of lineal primogeniture but they were entered in list 2 prepared in conformity with Section 8 of Act I of 1869, which contains estates that devolve upon a single heir and not in list 3 which contains estates succession to which is governed by the rule of lineal primogeniture. The first case on the question was decided by the Privy Council in 1877, in which it was held that though the Sanad prescribed a rule of succession by lineal primogeniture, it was wholly superseded by Act I of 1869 and as the estate in question was entered in list 2, succession to, it was governed by the custom of primogeniture determined by the rules of the Mitakshara, no other customs having been established, and not by the rule of lineal primo-

(1) Mirabivi *v.* Villayanna 8 Mad. 46 Alagu *v.* Palaniappa 28 I. C. 278 Mad. W. W. (1915) 221.

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geniture mentioned in the Sanad (1). The second decision was about Taluka Pawansi and was to the same effect (2) In another case about Taluka Dasarathpore it was held that succession was governed by the rule of Section 22 of the Act and the granting of a Sanad was of no avail (3). In the latest case on the question, which was about the Taluka Rajpore Keotana, all the previous rulings considered by the Privy Council (4). Their Lordships held that the estate being entered in list 5 was governed by the rule of primogeniture, which under the Act meant the rule of lineal primogeniture as understood in the English Law and the Sanad was to the same effect, but in so far as the Sanad prescribed that succession was always to go to males, it was superseded by clause 11 of Section 22. To the same effect is the decision in the Mahewa case (5).

Now it is clear from the above decisions that the terms of the Sanad must be considered as superseded by the provisions of the Act about succession. Specific rules are laid down in Section 8. When all these fail, clause 11 comes

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(1) Brij Indar Bahadur Sing *v.* Rani Janki Das, 5 I. A, I., 1 Cal. L. R. 3 18.

(2) Jagdish Bahadur *v.* Sheo Partab Sing, 28 I. A. 100, 23 All. 369, (1904).

(3) Ran Bijai Sing *v.* Jagatpal Sing, 18 Cal. 111 P. C., 17 I. A., 173. (1890).

(4) Debi Baksh Sing *v.* Chandrabhan Sing, 32 All. 599, 7 I. C., 724, (1910).

(5) Sheo Nath Sing *v.* Raghubans Kunwar, 27 All., 634 P. C.

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into force which enacts that "in default of any such descendants, then to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such Talukdar or grantee, heir or legatee are subject." Estates in lists 3 and 5 were governed by the rule of lineal primogeniture taken with the provision of the Act and estates in list 2 were governed by the provisions of the Act and when they are exhausted by the rules of Hindu Law with the modification that only one should take. In case of collaterals, the rule, it has been recently held in Oude, is that the nearest heir succeeds and he is to be determined not by the rule of lineal primogeniture but by that of primogeniture by proximity (1). It has been held by the Privy Council that in such cases the degree prevails over the line "though if two collaterals or persons in the line of heirship are equal in degree then as the properly can go to one, recourse must be had to the seniority of line to find out which that one is." (2)

Custom not excluded by the Act.

We have seen before that it has been held by the Privy Council that though succession to estates in list 4 is regulated by "the ordinary law to which members of the

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(1) Ghisa Sing *v.* Gajraj Sing, 33 I. C., 372, 18 Oude case, 239.

(2) Bhâi Narendar Bahadur Sing *v.* Achal Ram, 20 Cal., 649, 20 I. A., 79.

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intestate's tribe and religion are subject," a valid custom may be proved to govern succession in such estates (1), as ordinary law includes family custom within the meaning of the Act (2). It has also been held that under clause 11 of section 22 of the Act, the estate descends according to the rules of Hindu Law but does not become partible in consequence (3).

(*b*) *Limitation.*

We next go to the rules of limitation applicable to suits about impartible estates.

Adverse possession for 12 years.

As in the case of ordinary property, adverse possession for twelve years will bar not only the right of the holder of an impartible estate, self-acquired or ancestral, or of a Vatan or a service tenure, but also of his sons, coliaterals and of other succeeding holders by right of inheritance (4). In case of an inalienable estate however, when a person by virtue of an alienation or otherwise gets possession through the instrumentality of the holder for the time being and is thus in the position of one claiming under him, his possession will not bar the succeeding holder, unless it extends for 12 years after the succession of the latter to the estate.

Adverse possession in case of joint family estate

Suits for recovery of impartible property belonging to a joint family is barred on the

(1) 36 I. A., 25.
(2) 20 Cal. 649 P. C.
(3) Ran Bijai *v.* Jagatpal, 18 Cal., 111 P. C.
(4) Radhabai *v.* Anantray, 9 Bomb., 224 F. B.

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expiry of 12 years from the time when the exclusion from possesion or enjoyment of the property became known to the plaintiff, under Art. 127 of the Limitation Act. It has been held that the burden of proof in these cases is on the defendant to show exclusion for 12 years (1). But it seems to me that in case a person has been in actual possession of impartible property excluding another, the burden ought to be on the latter when he pleads that the suit is saved from limitation on the ground that it is joint property and that he has been excluded within twelve years of suit (2).

What constitute exclusion.

What constitutes exclusion and separation is thus a very material one in deciding whether a suit for the recovery of immoveable property is barred by limitation. It has been held that separate enjoyment of maintenance and *babuana* grants, separate mess and residence may be quite compatible with the retention of the contingent coparcenary interest by the junior members (3). When a junior member was not very distantly related to the last holder, had been residing in the Gur, had the expenses

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(1) Umesh *v.* Jagadish, 1 C. W. N. 543. Jivat Bhat *v.* Anibhat, 22 Bom. 259. Rukmanoni *v.* Motilal, 4 Bom. L. R. 135. Sellam *v.* Chinnamal, 24 Mad. 441.

(2) See Raghunath *v* Moharaj, 11 Cal. 777 P. C

(3) Sartrajkuary *v.* Deorajkuari 10 All. 272, 15 I. A. 51. Savagnana *v.* Perisami, 1 Mad. 312, 5 I. A. 61. Doorga *v.* Doorga 4 Cal. 190. Chintamon Sing *v.* Nowlukho. 1 Cal. 153. Rup Sing *v.* Baisni, 11 I. A. 149, 7 All. 1.

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of the marriages of daughters, &c., paid by the Raj, had a common worship, and did all acts, which showed his retaining his rights as a member of a joint family, he should be considered joint and in enjoyment of such right.

It was for some time thought that there could be no separation as regards ancestral impartible property. But the Privy Council have in the latest case on the question held that by their conduct the junior members may separate (19 C. W. N. 1119).

It has also been held that in a suit for general partition when some portion of the family property was partitioned and the rest was held to be impartible, the fact did not constitute separation(1). It has even been held in the Devarcota case that when in consequence of a suit for partition of the entire family property, a portion of the property is divided but the remaining portion is declared impartible, the family remains undivided in respect to the latter (2). This case can not be reconciled with the latest Privy Council decision of Thakurani Tarakumaree *v.* Chatoorbhooj [19 C. W. N. 1119.] Indeed here is a confusion importing the incident of impartibility of an estate as attaching to a joint family. A joint family may separate and by their acts and conduct

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(1) Raja Yarlagadda, 27 I. A. 151.

(2) Mallikarjuna *v.* Durga 17 Mad. 362 affd. 24 Mad. 147 P. C.

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can make the impartible property the separate property of one of them.

In one case when the members of the family partitioned certain estates but left one estate undivided and it was established that there was a family custom of impartibility, it was held that there was no partition of the latter among the members of the family and it continued joint family impartible estate (1), though there had been "to some extent a separation of the family." In the case there was a compromise and a written statement on which there was a disclaimer of any interest in the impartible estate by the junior member. It was held by the Privy Council that was not sufficient and could be construed consistently with the joint character of the impartible estate. The matter is one of very great difficulty in the present state of the law.

Limitation in case of usurpation.

Enjoyment of some portion of the joint property may save limitation in the case of ordinary partible property. But when a member assumes the Gadi and possession of the impartible property, though the other members may have some particiation by way of residence in the Gur and receipt of maintenance, the cause of action surely accrues when the former assumes the Gadi, and twelve years possession perfects his title to the impartibe estate. It has been held that a person claiming

(1) Chintamun *v.* Mussamut Nowluko Kur, 2 I. A. 263.

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an impartible estate may be barred, even if he received maintenance, for the receipt of such maintenance negatives joint right and enjoyment. (1)

When a female, who would be heiress of ordinary partible property, usurps an impartible estate and remains in possession for twelve years, any other member of the family, even if he be the rightful successor under the custom governing the estate, would be barred as against her. (2)

Possession of a widow when there is no right of female succession whether adverse.

But difficulties in another way sometimes arise when the widow, where there is no right of female succession, is in possession for more than 12 years of the impartible estate. Does it become her own Stridhan property? Ordinarily it would be. But when the widow retains possession as widow alleging a right of female succession, it may be reasonable to suppose that her possession is not adverse to the heirs of her husband who should get the property after her death and not to the heirs of her Stridhan. In a case about Vatans, the question arose in the following way: A widow was in possession adversely to her son for more than twelve years. The son when he came into possession as the heir of the said widow brought a suit against a mortgagee from the widow. It was held that

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(1) 24 Mad., 589.

(2) See 11 Mad. 38, 16 Mad. 237, 17 Mad. 362, 18 I. A., 45.

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the suit was not barred as the Vatan was inalienable and a mortgage by the widow could have no force beyond her lifetime, because the restriction that an alienation by way of mortgage of any portion of a Vatan has no effect beyond the lifetime of the Vatandar, is an incident of the tenure, and the heir of the holder without legal title except adverse possession, was entitled to the benefit of it. (1)

Remedy in case of possession 12 years by an alience of inalienable vatan.

An alienation of Vatan lands is not valid and operative beyond the lifetime of Vatandar. The Collector can declare an alienation void and under Sec. 11A of Act 3 of 1874 summarily recover possession but a mere order by him that possession be delivered to the applicant is without jurisdiction and does not prevent the acquisition of title by adverse possession for twelve years notwithstanding the order, as against the rightful Vatandar though the Collector may not be bound by the provisions of the Limitation Act. (2) If the latter position is correct there is nothing to prevent the Collector to recover possession and to make over the property to the Vatandar.

Limitation in case of alienation.

A suit for the recovery of an impartible property alienated must be brought within 12 years from the death of the last holder, male or female. In case of Vatans and hereditary

(1) Padapa *v.* Swami Rao, 24 Bom 566 P. C., 29 I. A. 86. Kalu Narayan Kulkarni *v.* Hadmapabin Bhamapa, 5 Bom. 435.

(2) Magan Chand *v.* Vtihalrav, 37 Bomb. 37, Narasenba *v.* Vaman 34 Bomb. 91, Amrita *v.* Ghredhara 33 Bomb. 317, Chandra *v.* Bahmabai, 17 Bomb. 262.

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offices, it has been held in Bombay and Madras, that in the absence of fraud or collusion, a predecessor fully presents his successor in the matter of limitation, and except in the case where the alienation is *ab initio* void, when limitation runs from the date of the grant, limitation will run from the death of the alienor. (1)

It has also been held in the case of a Nambudri Illam in Madras, that when a grant is made not for any necessity of the Tarwad, and the grantee is in possession for more than 12 years, he can not be ejected by the succeeding Kanaravan or manager of the family Tarwad.(2)

Limitation in case of possession by females under Oude Act.

A difficult question of Limitation recently arose in a case about an Oude Taluk. The last male holder of Taluka Korihar Sataon otherwise known as Onuai owned by Bais Kshatriyas descended from Raja Tilak Chand was Chandrapal Sing. He died on 20th December 1889 intestate leaving a widow Dilraj Koer and a daughter Giriraj Koer, Dilraj Koer succeeded her husband in accordance with the provisions of clause 7, Section 22 of Act I of 1869. She died on 22nd May 1899. The Court of Wards thereupon took possession of the estate on behalf of the minor daughter Giriraj Koer. There were several

(1) Babaji *v.* Nava, 1 Bom. 535. Radhabai *v.* Anantarav, 9 Bom. 198. Veerabhadra *v.* Vellanke, 10 Mad. L. J. 114. Gnana *v.* Velu, 27 I. A. 69. Chidamlaran *v.* Memmal, 23 Mad. 439.

(2) Madhava *v.* Narayana, 9 Mad. 247.

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claimants. The Board of Revenue after considering the claims of contesting parties entered into a compromise with Jwala Bux one of the *agnates* by which a provision for the maintenance of Giriraj was made and the estate made over to Jwala Bux on 4th January 1900. On the 4th January one Ghisa Sing who was a nearer heir according to the rule of lineal primogeniture brought a suit for the recovery of the property. It was contended for the plaintiff that Art. 141 of the Limitation Act according to which Limitation would run from the date of the death of the widow would not apply as it was not a suit "of a like nature" mentioned in that article, as he did not claim as reversioner under the Hindu Law, the widow having succeeded under the provisions of the Oude Estates Act and took an estate, which was not identical with a widow's estate, as she had not the power of disposal, which a widow had under Section 11 of the Act. The Court held that the word "like" covered such an estate, as her estate was more akin to a true "life estate" than that of a widow and that Art. 141 applied to all cases in which the intermediate estate held by a female is of a limited nature. The Court further held that the possession of the Court of Wards was not that of a trustee for the true owner, but was on behalf of Giriraj Koer, who was a trespasser according to the plaintiff, and if it were

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contended that Jwala Bux did not derive her title from Giriraj, he derived his "liability to be sued" from Giriraj. The Judges held that by the deed of 4th January 1900; Giriraj though his title was imperfect, she had some sort of a title by possession which she transmitted to Jwala Bux and thus her possession could be tacked to his own possession by the latter, which was adverse to the plaintiff and the suit was thus barred under Art. 144 also. In this case a question was also discussed whether Art. 141 applied to Christian Talukdars, who are only seven in number in Oude. Clearly their case did not come within the purview of Art. 141. The opinion was also expressed that Section 190 of the Indian Succession Act would affect the rights of the heir to a Christian Talukdar who died intestate and "he could not maintain a suit for recovery of the estate until Letters of Administration had first been granted, a disqualification which does not affect Hindus and Muhammadans. (1) Logically according to the decision, Art. 141 would apply to the case of a Muhammadan Talukdar whose widow obtained possession under Section 7.

Limitation in case of unauthorized tenure.

In the case of a Ghatwali, the Privy Council held that the possession of a tenure created by a preceeding Ghatwal was not adverse against

(1) Ghisa Sing *v.* Giriraj 33 I. C. 372.

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his successor until some definition or assertion of adverse title has been made. (1)

In the case of maintenance grants, the Privy Council in a later case have held that even a notice by the grantee alleging permanent right would not make his possession adverse.(2) The matter has been dealt with at p 145.

Limitation in case of leases of inalienable estates.

It has been held in the case of leases by a female holder, and the same rule must be applicable to male holders of inalienable estates, that when they are without necessity they are not wholly void but only voidable, and that acceptance of rent, even when it has been deposited by the lessee in Court after the death of the widow, by the reversioners confirms the permanent lease. (3) As a necessary corollary, it has been held that on the death of a widow a suit by a reversioner to recover possession of immoveable property by setting aside a permanent lease executed by her is governed by the rule of 3 years' limitation under Art 91 and not by Art 144 of the Limitation Act. (4) The same rule would apply in the case of male holders of inalienable impartible property.

Limitation in suits for maintenance.

Suits for arrears of maintenance by junior members of a family are barred by 12 years limitation. The period begins to run from the

(1) Tekait Ram Chundero *v.* Srimoti Mudho Kumari, 12 I. A. 188. See Petambar *v.* Nilmoney, 3 Cal. 793

(2) Beni Prosad *v.* Dudnath, 27 Cal. 156, P. C.

(3) Modhoosudun Sing *v.* Rooke, 24 I. A. 164, 25 Cal.

(4) Bejoy Gopal Mukerjee *v.* Nilratan Mukerjee, 33 Cal. 9000.

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time when the right is first overtly and expressly claimed and denied. Under the Act of 1871 arrears of maintenance might be claimed for more than 12 years, if there had been no claim and denial of the right. (1) Under the new Act, in no case can maintenance be claimed for more than 12 years. It has been held that a junior member may bring a suit for maintenance and recover past maintenance for 12 years in that suit, it not being necessary to prove a demand for each year's maintenance as it became payable (2). It has been held that wrongful withholding of maintenance constitutes the cause of action (3). The withholding may be proved either by demand and refusal or by circumstances which would amount to a refusal of maintenance. Non-payment of maintenance does not necessarily amount to denial of the right, though it may be *primafacie* evidence of wrongful withholding. (4)

(c) *Procedure in claims about maintenance.*

In a suit for maintenance it is incumbent on the plaintiff to prove that there has been a wrongful withholding of the maintenance(5).

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(1) Jivj *v.* Ramji 3 Bom 207.

(2) 27 I. A. 151. 3 Bom. 421.

(3) Malikarjuna *v.* Durga, 24 Mad., 147 P.C., 27 I. A., 151 See 3 Bom. 420.

(4) 27 I. A. 151.

(5) 17 Mad., 262 affd. 24, Mad., 147 P. C.

CENTRAL LIBRARY

Maintenance may be decreed in suit for possession.

In a suit for possession only of an impartible estate by a widow, a collateral or an illegitimate son, if the main claim fails, proper maintenance may be decreed and such maintenance may be made a charge on the estate (1), even though maintenance might not have been claimed in the suit. (2)

Past maintenance decreed in suit for declaration.

Past maintenance may be decreed at the rate found payable for future maintenance in a suit for declaration of the right of maintenance, or at a lower rate according to circumstances and the future and past maintenance should be a charge on the impartible estate (3).

Decree should direct payment of future maintenance which can be realized in execution.

A decree for maintenance should contain an order directing payment of future maintenance after determining the amount to be paid annually (4). Future maintenance can be realized by execution of such decree without fresh suit (5).

Mesne profits not allowed when maintenance not offered.

If a collateral succeeds in recovering an impartible estate from the widow or other person, who is entitled to maintenance, no decree for mesne profits would be made, unless it is shown that the plaintiff made an offer of suitable maintenance to the defendant (6).

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(1) Chuoturya Run Murdun *v.* Saheeb Purhulad, 7 Moore. 52.

(2) Maharanee Indar Kunwar *v.* Maharanee Jaipal Kunwar, 15 Cal. 725 P. C.

(3) Raghubans *v.* Bhagwat, 21 All. 183. Raja Yarlagadda *v.* Raja Yarlagadda, 27 I. A., 151.

(4) Vishnu *v.* Manjamma 9 Bomb. 108.

(5) Ashutosh *v.* Luckymony 19 Cal. 139 F. B. Sinthayee *v.* Thanakepudegar 4 Mad. H. C. 28.

(6) Ekradeswar *v.* Janeswar, 42 Cal., 582 P. C.

CENTRAL LIBRARY

Pending a suit for partition, a younger brother or widow may claim maintenance as a provisional means of support. (1)

Maintenance may be allowed pending suit for partition.

(*d*) *Resjudicata.*

A decree obtained against the holder of an impartible Raj, when it is not inalienable, is *resjudicata* against his successor, as in the case of ordinary partible property. But when the estate is inalienable, as in the case of Vatans, and in the case of hereditary offices, a decree obtained against the holder for the time being is *resjudicata*, when obtained without fraud or collusion (2). There is a very learned discussion of the question contained in a judgment of Sir Raymond West and I cannot do better than read it to you, as it will give you a clear idea of the principles governing such cases :

When are decrees against holder *resjudicata* against successor.

"In the case of self-acquired property, a judgment affecting it is necessarily *resjudicata* against a succeeding holder taking through the judgment-debtor. In the case of ancestral estate a judgment on the right to it against a father must generally be *resjudicata* as regards his issue (3). Mayaram Sevaram *v.* Jayvantrav Pandurang (4) ; Pitam Singh *v.* Ujagar Singh

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(1) 27 I. A. 160.

(2) Radhabai *v.* Anantrav, 9 Bom. 198. Veerabhadra *v.* Vellanki, 10 Mad. L. J. 114 Vencayya *v.* Suramma, 12 Mad. 235.

(3) West and Buhler H. L., 162, 163.

(4) Printed Judgments for 1874, p. 41.

CENTRAL LIBRARY

(1), though a decree in a suit, seeking to make the patrimony answerable for a father's transactions, will generally not bind the sons, unless they are made parties (2), (3). Even a widow, limited as her estate is, represents the expectant heirs in a suit directed against the property on a title not derived from her—see the cases of Babaji *v.* Nana (4) and Jugol Kishore *v.* Maharaja Jotindro Mohan Tagore (5); and if a judgment obtained against a father would not bind his issue, there would be virtually no limitation to suits claiming property as ancestral. A fraudulent and collusive suit will entitle the son to get the judgment, by which he is wronged, set aside; but, apart from fraud, the law of *res judicata* must guard titles against claims of members of joint families and heirs to ancestral estates, equally as against any other claims.

In the case of collateral succession (6), the collaterals, after the generation in which a grant or conveyance was made, must come in by heirship, seeing that a gift to persons unborn is not recognized by the Hindu law (7).

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(1) I. L. R. 1 All. 151.

(2) West and Buhler H. D. 168, 617, 750.

(3) Ibid, 642.

(4) I. L. R. 1 Bom. 536.

(5) Nephews were held to have been represented by their uncle Naragan Gop Habbu *v,* Panduring Ganu, I. L. R. 5 Bom. 685.

(6) West and Buhler H. L., 179, 185, 217.

(7) See L. R. 9 I. A., 104.

CENTRAL LIBRARY

As representing a public interest they might get an improvident alienation or incumbrance set aside—Rajah Nilmoni Singh *v.* Bakranath Sing (1) but as heirs they take through their predecessors in title the property of the latter, in quantity and quality determined by the rights established against it, as well as those established in its favour (2), as one and the same estate, not as several estates in the hands of successive possessors or groups of possessors. In the case of an impartible Zamindari, it has lately been held at Madras, the Sivagiri Zamindar *v.* Tiruvengada (3), that a compromise embodied in a decree against an ancestor gave a right of execution against his issue, though this involved a severance of part of the estate, and though in the language of the Judicial Committee "the same principle which precludes a division of a tenure upon death must also apply to a division by alienation," Rajah Nilmoni Singh *v.* Bakranath Singh (4). The case just referred to shows that the collateral public interest might guard an estate which, apart from that connexion, would become subject to all the ordinary incidents of property.

In the case of a *vatan* or property held on

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(1) West and Buhler H. L., 162.
(2) I. L. R. 7 Mad. 339.
(3) L. R., 9 I. A. at p. 122.
(4) See L. R. 9 I. A. 104, 120, 121

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

a tenure of public service, it follows, from the considerations already stated, that each holder of office in succession, being subject to the service, may, or at least might, under the Hindu Law and Regulation XVI of 1827, insist, as against his predecessor's alienation, on a restoration of the property to its intended uses: Rajah Nilmoni Singh *v.* Bakranath Singh It is in this sense probably that the learned judges in Kuria *v.* Gururavz, said that a *vatan* is held "on a tenure of successive life-estates." (1) No holder could dispose of the *vatan* for a term extending (as the cases have determined) beyond his own life. But the validity, as against the issue, of a decree as to the ownership of a particular field or area, obtained against the ancestor rests on different considerations. The observations of Mr. Reeves on the operation of the English Statute De Donis are here very pertinent. "It was intended," he says, "by that Act to bind up the hands of the tenant-in-tail from prejudicing his issue, but not to preclude third persons from pursuing their lawful claims against the land entailed. It could not be said in opposition to *their* right that the will of the donor should be observed. The Statute provides only against voluntary alienations, and, among others, declares that a fine levied upon such entailed land shall be

(1) 9 Bom. H. C. Rep. 282.

CENTRAL LIBRARY

void—a fine being at that time an amicable suit for the single purpose of transferring the possession and right of land. But to all involuntary alienations, to all recoveries by right, such land entailed was still liable notwithstanding the strict restraint on alienation by the owner" (Reeves's History of the Common Law, Vol. III, p. 330. In other words, an entail or a dedication to a public service can not affect the right of outsiders to lands not embraced in it, or which could not legally be embraced in it. If then, a *vatan* is an estate, as it seems to be, it would be contrary to sound legal principles that the same man should have to prove again and again in successive suits that a piece of land held by him as his own did not from part of the *vatan*. For the quieting of titles here, as in the case of an ancestral property of the usual kind, it is necessary that some one should be recognized as capable of representing in litigation the aggregate of interests, in virtue of which he is in possession of the *vatan*. (1) Under the Hindu law the son in each generation represents his father, and takes up his *persona* as centre of a connected group of rights and liabilities in the fullest possible sense. (2) As regards the issue, therefore, of a *vatandar* against whom a judgment has been given, it

(1) See Code of Civ. Proc. (XIV of 1882). S. 13. Expl. 5.
(2) West and Buhler H. L, 162, 165, 216.

CENTRAL LIBRARY

seems that no doubt ought to be entertained of their being bound by the judgment as *res-judicata*. A *vatan*, recognized as such, cannot legally pass away from the *vatandar* family—Wamnaji *v.* Parashram (1), and even though the family should have divided into several branches with rights enjoyed in rotation, this does not seem to constitute for each branch so distinct an estate that, on its falling into possession, that branch can claim to revive a contest in which another branch has already been defeated (2): Smith *v.* Lord Brownlow (3), Phillips *v.* Hudson (4). Under the Regulation law each branch as it succeeded to the office and the emoluments constituting the *vatan*, might claim to renew the struggle as representing *an inalienable public interest*; but this interest is now placed under the guardianship of the Collector, who has absolute power to defeat a judgment that would withdraw land from the *vatan* holding. (5) The *private right* should not be incapable of final determination. It is not, in fact, ever disputed that a *vatandar* in possession may singly sue to recover property wrongfully severed from the *vatan*. He is not called on to join every

(1) Printed Judgments for 1884, p. 220.

(2) See Code of Civ. Proc. (XIV of 1882). S. 30.

(3) L. R. 9 Eq. 241.

(4) L. R. 2 Ch. Ap. 243; Comp. Nandun Lall *v.* Lloyd, 22 C. W. R., 74 Civ. Rul.

(5) Bom. Act. III. of 1874, s. 10.

CENTRAL LIBRARY

one however remotely interested as a plantiff: Comp. Pyke *v.* Crouch. (1) But if he has the capacity thus to represent the aggregate of interests in a successful suit, he must have it equally in an unsuccessful suit, and in the absence of fraud, he must have it no less in a suit in which he is defendant. In the case of the Zamindar of Sivgiri *v.* Arunachala (2) the High Court of Madras says: "His (the Zamindar's) argument is, that a creditor who wants to make a Zamindari available is bound to sue, not only the Zamindar for the time being, but all those possible successors to whom the estate may pass before the debt is liquidated. The effect of this, however, would be to raise a great number of collateral issues ⁂ ⁂ It seems to us that the Zamindar represents the estate during his life for all practical purposes." This was in the case of an impartible Zamindari, which might be supposed to bear the closest resemblance to an entailed estate under the Statute De Donis in England; (3) yet the decree against the father was given effect to on the estate in the hands of the son: Muttayan Chettiar *v.* Sangili Vira Pandia Chinatambier. (4) Property dedicated to religious purposes is, by Hindu law,

(1) I Lord Raym, 730.
(2) I. L. R. 7 Mad. 335.
(3) West and Buhler H. L. 161.
(4) L. R. 9 I. A. 144.

CENTRAL LIBRARY

inalienable: Maharanee Shibessouree Debia *v.* Mothooranath Acharjo (1),(2); Khushalchand *v.* Mahadevagiri; (3) yet a decree obtained without fraud against one Mahant or Shebait binds his successors: Golab Chand Baboo *v.* Prasanno Coomari Debia, (4) Jevun Dass Sahoo *v.* Siah Kubeeroodeen, (5) Prosunno Coomari Debia *v.* Golab Chand Baboo (6). He fully represents the estate in litigation, and a judgment for or against him is *res-judicata* for his successor though in case of an alienation or incumbrance limitation is computed against the successor only from his succession: Mohunt Burm Suroop Dass *v.* Khashee Jha (7).

How far English precedents can or cannot help us in our present inquiry, may best be gathered, perhaps, from *Ferrer's case* and the notes in Thomas and Fraser's edition of Coke's Reports (Part VI, 76). An adjudication under the Common Law did not prevent the pursuit of the same right by an action of a higher nature, and thus even the same plaintiff who had failed in a *formedon in descender* might sue again in a *formedon in reverter* or *remainder*. He could not have a new *formedon in descender*, but

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(1) 13 Moo. I. A. 273.
(2) West and Buhler H. L. 201, 741, 785.
(3) 12 Bom. H. C. Rep. 214.
(4) 20 Calc. W. R. 86.
(5) 2 Moo. I. A. 392.
(6) L. R. 2. I. A., 150.
(7) 20 Calc. W. R., 471.

CENTRAL LIBRARY

his issue-in-tail could. This was a consequence of the express provision of the Statute De Donis (1). "So," Coke says "if he be barred in a writ of error on the release of his ancestor, his issue shall have a new writ of error, for he claims, not only as heir, but *per formam doni*, and by the Statute shall not be barred by feigned pleading or false pleading of his ancestor so long as the right of the entail remains." On the same principle it was that a warranty given with an entail was itself entailed, so that a release of the warranty by an ancestor could not bar the issues (2). But these decisions rested on the explicit language of the statute. But for the Statute of Westminister II., as Coke says, even if the tenant-for-life, where the remainder was over in fee, had sufferred a recovery, he in the remainder was without remedy, a consequence which Coke approves, as tending to prevent a multiplicity of suits on the same cause of action. The power thus placed in the hands of the tenant-for-life was so abused that the assent of the person in remainder or reversion was made necessary by the Statutes 32. Hen. VIII c. 31 and 14 Eliz. c. 8, but still with saving in favour of any who should recover against the tenant-for-life by a real, not a fictitious title. Thus in a really contentious

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(1) See Revised Statutes, Vol. I., p. 42.

(2) Co. Lit., 392. B.

CENTRAL LIBRARY

suit the tenant-for-life represented not only his own interest, but all interests in succession to it, though these were drawn from a source higher than his own estate. The entailed warranty, too, would lose all its efficacy for the issue by the ancestor taking advantage of it though fictiously, in the feigned action of recovery (1). A fictitious recompense in lands awarded, from the common vouchee enabled the tenant-in-tail, on the principles settled in Taltarum's case to bar the estate tail itself with the remainders and the reversion depending on it (2). The strong tendency of the English jurisprudence to give effect to a judgment obtained against the actual holder of a freehold estate in this way defeated the stringent provisions of the Statute law.

The subsequent history of this branch of the English law need not be traced. In the present day the complete representative capacity of the holder of an estate of inheritance is unquestioned (3). It is plain that, even where the Legislature had pronounced against alienation, the force of a judgment recovered was so great, and the difficulty of distinguishing after many years between contentious and amicable proceedings was so great, that the doctrine of *res-judicata*

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(1) Co. Lit, Ub. Sup.

(2) Cruise's Dig. Vol. V. 270 ; Shepp. Touch. Vol. I., p. 39, Note 6.

(3) See per Lord Eldon in Cockburn *v.* Thompson, 16 Ves. 326, and Lloyd *v.* Johnes, 9 Ves., at pp. 56-57.

CENTRAL LIBRARY

became the commonest foundation of ownership. Nor could the ascription of lands to the support of public services prevent this when the devolution of estates without a new appointment or sanction by the Crown at each descent had once been recognized. (1) All lands were held immediately or mediately from the Crown on various tenures of service, the due performance of which could not but be impaired or endangered by alienation; yet alienation, mostly by judicial forms, became the almost universal rule, recognized as inevitable and beneficial as the special liability of the land for the chief public services became obscured in the later developments of the political and fiscal system.

English analogy, then, points clearly to this, that, in the absence of express legislation to the contrary, the holder of an hereditary estate, such as a *vatan* is, represents in litigation the aggregate of interests in the land which, for the time being, centre in him. By a suit in which he is successful he wins for all: by one in which he fails he loses for all. The exceptions rest on temporary contractual relations, on defect of the estate, or on specific statutory provisions.

If we look to the continental systems derived from the Roman law, we find the same

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(1) The decision in Raja Nilmoni Singh *v.* Bakranath Singh, L. R. 9 I. A. 104, 124, turns on the same point.

CENTRAL LIBRARY

efficacy given to judgments obtained against the holders of restricted estates. The law of substitutions derived from the Roman law of *fidei-commissa* and of substitutions, though very different from the latter, was once widely prevalent. It wholly forbade any alienation such as to impair the estate of a successor; yet as the holder, while he held the property, held it as owner, all rights and liabilities as to suits concering the estate centred in him: *ipsiet in ipsum competunt.* Consequently, a successful suit on a right contradicting his title effaced at once both his title and the substitutions depending on it. The "remainder men" or the guardians of the substitutions, could intervene to prevent illicit dealings or to protect the proceeds of necessary sales; but they could not avert the operation of *res-judicata* resulting from an honest contest. Another consequence of the "persona," to which the estate was annexed being completely filled, was that a title by prescription acquired against the life-holder was acquired against all his successors. As all rights centred in him, that adverse act, and the submission to it, which extinguished them in him extinguished them altogether (1). According to the Scottish law, an action *bona fide* litigated by an heir of entail is *res-judicata* in questions with

(1) See Pothier Tr. Des. Substitutions, 5 passim.

CENTRAL LIBRARY

succeeding heirs (1), and the force of judgments extends much further than would be necessary of the adjudication of the present case.

It would seem, then, to be a general principle of jurisprudence that a mere special line of descent or mode of devolution prescribed in particular cases, does not make the property subject to it exempt from the effects of a judgment against the person in whom at the time the estate is vested. The particular law of devolution in such a case no more involves such a consequence than the general law of devolution which would otherwise operate. Where the aggregate estate is not fully represented, *res-judicata* can affect it only to the extent of the representation."

Compromise decrees how far binding.

We next go to the question how far compromise decrees against the holder of an impartible estate are binding on his successor.

A decree passed on a compromise declaring that the property was not divisible but the profits were, was held not to be *res-judicata* in a subsequent suit, inasmuch as that was no adjudication of the impartible character of the property (2), which must arise out of some special tenure or some general family or local custom (3).

The effect of a compromise decree was

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(1) Ersk. Tr. Vol. II., p. 1137.
(2) Pirojshah, *v.* Manibhai, 13 Bom. L. R. 955.
(3) Vinayak Waman Joshi *v.* Gopal Hari, 30 I. A. 77.

CENTRAL LIBRARY

considered in a recent Privy Council case about the Zamindary of Singraman in the District of Jaunpore. The widow of the deceased holder took possession of the property on the strength of a will by her husband. The next reversioner brought a suit against her on the ground that the property was impartible and inalienable. There was a compromise by which it was declared that the widow was to be Gaddi-nashin and that after her death, the plaintiff or any other representative should be the owner, the plaintiff being in the meantime entitled to a monthly allowance. The plaintiff predeceased the widow without leaving a son. His widow sued the other members of her husband's family who succeeded on the death of the defendant in the previous case. The Privy Council held that the previous compromise decree did not give her hasband a vested interest and she could not therefore succeed as his heir in pre-ference to these who would be next heirs of the last male holder. (1)

A question recently arose as to the effect that should be given to a compromise between the holder of an impartible estate and a maintenance holder of it. The Thakore of Gamph in Kathiawar granted a village for maintenance or Jivai to one of his junior sons. There was a litigation between the successor of the Thakore and the sons of the grantee,

(1) Harpal, *v.* Lekhraj 34 All 65 P. C.

CENTRAL LIBRARY

which resulted in a settlement under which the greater part of the village was given to the sons of the grantee and their descendants describing them as "who are heirs" as Maliks, Mukhtiars and Dhanis—terms which ordinarily signified an absolute estate. There was, however, proved a well-established custom that all Jivai grants reverted to the Gadi on failure of male issue. The High Court of Bombay held (1) that notwithstanding the use of terms Malik, &c., mentioned above, the grant continued to retain its original character, as those words were not intended to extend the character of the tenure and because "the general words in a release are limited always to that thing or those things which were specially in the contemplation of the parties at the time when the release was given. But a dispute that had not emerged or a question which had not at all arisen can not be considered as bound and concluded by the anticipatory words of a general release." (2)

Execution of compromise decree against successor.

A compromise decree against an ancestor gives a right of execution against his issue in respect of impartible property. (3)

In a recent case however, when a consent decree was obtained by a mortgagee against a Zamindar, the holder of a Dayadi Pattam, and

(1) Amarsingji *v.* Bai Naniba, 28 I. C., 532, 17 Bom., L. R. 272.

(2) Lord Westbury in London and South Western Railway *v.* Blackmore (1870) 4 H. L. 623.

(3) The Sivagiri Zamindar *v* Tiruvengaddy, 7 Mad. 339 P. C. Radhabai *v.* Anantrav, 9 Bomb., 216 F. B.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

his prospective heirs for sale of the estate, which was impartible and inalienable, it was held that the decree did not bind the latter, when they succeeded, as they were not dormant co-owners but had a mere expectancy and transfer of such right was a nullity under sec. 6 of the Transfer of Property Act. (1) The decision however, is difficult to understand and does not seem to be quite consistent with the principles laiddown in the cases mentioned above.

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(1) Ramasami Naik, *v.* Ramasami Chetti 30 Mad. 255.

CENTRAL LIBRARY

APPENDIX.

Regulations about Impartible Zamindaries.

REGULATION XI OF 1793.*

A REGULATION *for removing certain Restrictions to the Operation of the Hindoo and Mahomedan Laws, with regard to the Inheritance of landed Property, subject to the payment of Revenue to Government:* Passed *by the Governor-General in Council on the 1st May* 1793.

I. A Custom, originating in consideration of financial convenience, was established in these provinces under the Native Administrations, according to which some of the most extensive zemindarries are not liable to division. Upon the death of the proprietor of one of these estates, it devolves entire to the eldest son, or next heir of the deceased, to the exclusion of all other sons or relations. This custom is repugnant both to the Hindoo and Mahomedan laws, which annex to primogeniture no exclusive right of succession to landed property, and consequently subversive of the rights of those individuals who would be entitled to a share of the estates in question, were the established law of inheritance allowed to operate with regard to them as well as all

* See Reg. X., 1800.

CENTRAL LIBRARY

other estates. It likewise tends to prevent the general improvement of the country, from the proprietors of these large estates not having the means, or being unable to bestow the attention requisite for bringing into cultivation the extensive tracts of waste land comprised in them. For the above reasons, and as the limitation of the public demand upon the estates of individuals as they now exist, and the rules prescribed for apportioning the amount of it on the several shares of any estates which may be divided, obviate the objections and inconveniences that might have arisen from such divisions when the public demand was liable to annual or frequent variation, the Governor-General in Council has enacted the following rules.

Descend of landed property after 1st July 1794.

II. After the 1st of July 1794, corresponding with the 20th Assar 1201, Bengal era ; the 17th Assar 1201, Fussily ; 20th Assar 1201, Willaity ; 17th Assar 1851, Sumbut ; and the 2nd Zehigeh 1208, Higeree ; if any zemindar, independent talookdar, or other actual proprietor of land shall die without a will, or without having declared by a writing, or verbally, to whom and in what manner his or her landed property is to devolve after his or her demise, and shall leave two or more heirs, who by the Mahomedan or Hindoo law (according as the parties may be of the former or latter persuasion) may be respectively entitled to suc-

CENTRAL LIBRARY

ceed to a portion of the landed property of the deceased, such persons shall succeed to the shares to which they may be so entitled.

III. If any zemindar, independent talookdar, or other actual proprietor of land, shall die subsequent to the period specified in Section ii. without a will, or without having declared by a writing, or verbally, to whom and in what manner his or her landed property is to devolve after his or her demise, and shall leave two or more heirs, who, by the Mahomedan or Hindoo law (according as the parties may be of the former or latter persuasion), shall be respectively entitled to succeed to a portion of the landed property of the deceased, under the rule contained, in that Section, such persons shall be at liberty, if they shall prefer so doing, to hold the property as a joint undivided estate. If one or more, or all of the sharers, shall be desirous of having separate possession of their respective shares, a division of the estate shall be made in the manner directed in Regulation XXV., 1793,* and such sharer or sharers shall have the separate possession of such share or shares accordingly. If there shall be three or more sharers, and any two or more of them shall be desirous of holding their shares as a joint undivided estate, they shall be permitted to keep their shares united accordingly.

Estate how to be held in death of actual proprietor.

* Repealed by Regulation 19 of 1814.

CENTRAL LIBRARY

Manager to be appointed to shares held in joint property. Shares held separate how to be assessed.

IV. It is to be understood that, if any two or more sharers shall keep their shares united, under the option granted to them in Section iii., a manager for their joint estate is to be appointed under the rules contained in Sections xxiii., xxiv., xxv., xxvi., Regulation VIII., 1793; and that if any one or more of such sharers shall apply to have the separate possession of his or their share or shares, the proportion of the public jumma charged upon the whole estate which is to be assessed upon such share or shares is to be adjusted according to the rules prescribed in Section x., Regulation I., 1793. If the estate is held khas or let in farm, the provisions contained in Section xi., Regulation I., 1793, regarding estates so circumstanced which may be divided, will be applicable to it.

Commencement and operation of Regulation.

V. Nothing contained in this Regulation is to be construed to entitled any person to a share of an estate which may be now held entire by any individual, or that may devolve entire to any individual prior to the 1st July 1794, in exclusion of the other heirs of the last proprietor under the custom for the future abolition of which this Regulation is enacted.

Saving of bequests and transfers.

VI. Nor to prohibit any actual proprietor of land bequeathing or transferring by will, or by a declaration in writing, or verbally, either prior subsequent to the 1st July 1794, his or her landed estate entire to his or her eldest

CENTRAL LIBRARY

son or next heir, or other son or heir, in exclusion of all other sons or heirs, or to any person or persons, or to two or more of his or her heirs, in exclusion of all other persons or heirs, in the proportions, and to be held in the manner, which such proprietor may think proper; provided that the bequest or transfer be not repugnant to any Regulations that have been or may be passed by the Governor-General in Council, nor contrary to the Hindoo or Mahomedan law; and that the bequest or transfer, whether made by a will or other writing, or verbally, be authenticated by, or made before such witnesses, and in such manner as those laws and Regulations respectively do or may require.

REGULATION X OF 1800.

A REGULATION *for preventing the Division of landed Estates in the Jungle Mehals of the zillah of Midnapoor and other District*: Passed *by the Governor-General in Council on the* 11*th December* 1800.

I. By Regulation XI., 1793, the estates of proprietors of land dying intestate are declared liable to be divided among the heirs of the deceased, agreeably to the Hindoo or Mahomedan laws. A custom, however having been found to prevail in the jungle mehals of Midnapoor and other districts, by which the succession to landed estates invariably devolves to a single heir without the division of the property,

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

and this custom having been long established, and being founded in certain circumstances of local convenience which still exist, the Governor-General in Council has enacted the following rule, to be in force in the provinces of Bengal, Behar, and Orissa from the date of its promulgation.

Reg. XI., 1793, not to operate in the jungle mehals of Midnapoor and other districts.

II. Regulation XI., 1793, shall not be considered to supersede or affect any established usage which may have obtained in the jungle mehals of Midnapoor and other districts, by which the succession to landed estates, the proprietor of which may die intestate, has hitherto been considered to devolve to a single heir, to the exclusion of the other heirs of the deceased. In the mehals in question the local custom of the country shall be continued in full force, as heretofore, and the Courts of Justice be guided by it in the decision of all claims which may come before them to the inheritance of landed property situated in those mehals.

CENTRAL LIBRARY

Regulation and Acts about Ghatwalis.

REGULATION XXIX OF 1814.*

A REGULATION *for the Settlement of certain Mehals in the District of Beerbhoom, usually denominated the ghautwaullee Mehals* : PASSED *by the Vice-President in Council, on the 3rd December* 1814.

I. WHEREAS the lands held by the class of persons denominated ghautwauls, in the district of Beerbhoom, form a peculiar tenure to which the provisions of the existing Regulations are not expressly applicable; and whereas every ground exists to believe that according to the former usages and constitution of the country this class of persons are entitled to hold their lands generation after generation, in perpetuity, subject nevertheless to the payment of a fixed and established rent to the zemindar of Beerbhoom, and to the performance of certain duties for the maintenance of the public peace and support of the Police; and whereas the rents payable by those tenants have been recently adjusted after a full and minute inquiry made by the proper officers in the revenue department; and whereas it is essential to give stability to the arrangements now established among the ghautwauls, the following rules have been adopted, to be in force from the period of their promulgation in the district of Beerbhoom.

II. A settlement. having lately been made

* See Act V., 1859.

CENTRAL LIBRARY

Ghautwauls in Beerbhoom, and their descendants in perpetuity, to be maintained in possession of their lands, and not liable to enhancement of rent.

on the part of the Government with the ghautwals in the district of Beerbhoom, it is hereby declared that they and their descendants in perpetuity shall be maintained in possession of the lands, so long as they shall respectively pay the revenue at present assessed upon them, and that they shall not be liable to any enhancement of rent so long as they shall punctually discharge the same and fulfil the other obligation of their tenure.

Ghautwaullee lands to form part of zemindary of Beerbhoom, and the rents how to be paid.

III. The ghautwaullee lands shall be considered, as at present, to form a part of the zemindary of Beerbhoom; but the rents of ghautwauls shall be paid direct to the Assistant Collector stationed at Soory, or to such other public officer as the Board of Revenue, with the sanction of the Governor-General in Council, may direct to receive the rents.

Amount payable to the zemindar of Beerbhoom.

IV. The difference between the amount of the revenue assessed on the ghautwauls and the fixed assessment of revenue in this portion of the zemindarry of Beerbhoom, payable to Government, shall be paid to the zemindar of Beerbhoom, and his heirs and successors, in perpetuity.

On failure of the ghautwauls to discharge their stipulated rents, their tenure how to be disposed of.

V. Should any of the ghautwauls at any time fail to discharge their stipulated rents, it shall be competent for the Governor-General in Council to cause the ghautwaullee tenure of such defaulter to be sold by public sale in satisfaction of the arrears due from him, in like

CENTRAL LIBRARY

manner, and under the same rules as lands held immediately of Government, or to make over the tenure of such defaulter to any person whom the Governor-General in Council may approve on the condition of making good the arrear due ; or to transfer it by grants assessed with the same revenue, or with an increased or reduced assessment, as to the Government may appear meet ; or to dispose of it in such other form and manner as shall be judged by the Governor-General in Council proper. Should any increase of revenue be obtained from the operation of any arrangements of the nature above described, such increase shall be paid in comformity to the tenor of the preceding article to the zemindar of Beerbhoom, his heirs and successors.

ACT No. V of 1859.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(*Received the assent of the Governor-General on the 4th March* 1859).

An Act to empower the holders of Ghatwalee lands in the District of Beerbhoom to grant leases extending beyond the period of their own possession.

WHEREAS it has been held that the Ghatwals of the District of Beerbhoom who pay the revenue of their lands directly to Preamble

CENTRAL LIBRARY

Government under the provisions of Regulation XXIX. 1814 of the Bengal Code have not the power of alienating their lands; and whereas, for the development of the mineral resources of the country in which the said Ghatwalee lands are situate, and for the improvement of the said lands, it is expedient that the power of granting leases for periods not limited by the term of their own possession, should in certain cases be extended to the possessors of such lands; It is enacted as follows:—

Ghatwals of Beerbhoom to have the same right of granting leases as is allowed to other proprietors of lands.

I. Ghatwals holding lands in the District of Beerbhoom under the provisions of the aforesaid Regulation, shall have the same power of granting leases for any period which they may deem most conducive to the improvement of their tenures, as is allowed by law to the proprietors of other lands. Provided that no lease of Ghatwalee lands for any period extending beyond the life-time or incumbency of the grantor of the lease shall be valid and binding on the successors of the grantor, unless the same shall be granted for the working of mines, or for the clearing of jungle, or for the erection of dwelling houses or manufactories, or for tanks, canals, and similar works; and shall be approved by the Commissioner of the Division, such approval being certified by an endorsement on the lease under the signature of the Commissioner.

Proviso.

II. If any of the said Ghatwalee lands be

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

at any time under the superintendence of the Court of Wards, or otherwise subject to the direct control of the Officers of Government, it shall be lawful for the Court of Wards or the Commissioner to grant leases for any such purpose as aforesaid; and every lease so granted shall be valid and binding on all future possessors of the said lands, anything in the existing law to the contrary notwithstanding.

Court of Wards and Revenue authorities to have the like power in certain cases.

CENTRAL LIBRARY

THE BENGAL SETTLED ESTATES ACT, 1904.

(BEN. ACT 3 OF 1904.)

[*9th March, 1904.*]

An Act to facilitate the family settlement of estates in Bengal.

Whereas it is expedient to facilitate the making of family settlements of estates by landholders in Bengal;

And whereas, the Bengal Land-revenue Sales Act, 1859, the Indian Succession Act, 1865, the Court-fees Act, 1870, the Indian Limitation Act, 1877, the Probate and Administration Act, 1881, the Transfer of Property Act, 1882, the Succession Certificate Act, 1889, and the Indian Stamp Act, 1899, having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

11 of 1859. 10 of 1865. 7 of 1870. 15 of 1877. 5 of 1881. 4 of 1882. 7 of 1889. 2 of 1899. 55 & 56 Vict., c. 14.

It is hereby enacted as follows :—

PART I.

PRELIMINARY

Short title and extent.

1. (1) This Act may be called The Bengal Settled Estates Act, 1904 and

(2) It extends to the whole of Bengal.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

(*a*) "estate" includes—

(*i*) immovable property,

(*ii*) money, and securities for money, and

(*iii*) any jewellery or other movable property which should, in the opinion of the Local Government, be treated as heirlooms ;

(*b*) "settled estate" means an estate in respect of which a settlement made under this Act is for the time being in force ;

(*c*) "settlor" means the person who makes a settlement under this Act ;

(*d*) "first tenant for life" means the settlor ;

(*e*) "second tenant for life" means the person appointed by a settlement made under this Act to take a settled estate on the death of the first tenant for life, or who on the surrender by the first tenant for life, takes his interest under the settlement ;

(*f*) "third tenant for life" means the person appointed by a settlement made under this Act to take a settled estate on the death of the second tenant for life, or who, on the surrender by the second tenant for life, takes his interest under the settlement ;

CENTRAL LIBRARY

(*g*) "tenant for life" means a first, second or third tenant for life;

(*h*) "son" includes a son born after the execution of a settlement, and in the case of anyone whose personal law permits adoption, includes also a son—

(i) duly adopted, either before or after execution of a settlement, by the adoptive father himself, or

(ii) duly adopted to her deceased husband within five years after his death, by a widow, acting under authority, in writing and registered, lawfully conferred on her by him in that behalf;

(*j*) "secured debt" means a debt, demand or claim which is secured by way of a mortgage, charge or lien on specified property and is primarily enforceable against such property;

(*k*) "unsecured debt" means a debt, demand or claim (other than a secured debt) for any sum exceeding five hundred rupees, which is inforceable against the person or general property of the debtor;

(*l*) "secured creditor" means a person who is entitled to enforce payment of a secured debt;

(*m*) "unsecured creditor" means a person

CENTRAL LIBRARY

who is entitled to enforce payment of an unsecured debt ;

(*n*) "incumbrance" means a secured debt, or an unsecured debt, or both ;

(*o*) the expression "the Collector," when used with reference to any estate, means the Collector of the district in which the estate or any part thereof is situated ; and

(*p*) the expression "the Civil Court," when used with reference to any estate, means the principal Civil Court having original jurisdiction in the area in which the estate or any part thereof is situated.

(2) A person shall be deemed, for the purposes of this Act, to be "competent to contract" if he is of the age of majority according to the law to which he is subject, and is of sound mind, and is not disqualified from contracting by any law to which he is subject.

(3) All words and expression used in this Act, which are defined in the Transfer of Property Act, 1882, shall have the same meaning as in that Act. 4 of 1882

PART II.

Application for Permission to make a First Settlement of an Estate.

3. (1) Any landholder may apply to the

CENTRAL LIBRARY

Who may apply for permission to settle an estate.

Local Government for permission to make a settlement of an estate under this Act,—

(*a*) if he is competent to contract,

(*b*) if he is in possession of the estate, either in his own right or along with or on behalf of others, and

(*c*) if the estate is held in permanent, heritable and transferable right :

(2) Provided that no application may be made under sub-section (1) in respect of any estate—

(*i*) unless the applicant is solely entitled to the estate, or

(*ii*) if the estate belongs to a joint Hindu family—unless the applicant is the *karta* or managing member of the family, or

(*iii*) if the estate belongs to co-sharers—unless the applicant is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, the sole right of management over the estate.

Signature, verification and contents of application.

14 of 1882.

4. (1) Every such application must be in writing, and must be signed by the applicant and verified by him in the manner prescribed in section 52 of the Code of Civil Procedure for the verification of plaints.

(2) Every such application must contain the following particulars, namely :—

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

(*a*) a description of the estate, sufficient for its identification ;

(*b*) a statement of the income yielded annually by the property comprised in the estate, and the revenue, rates and taxes due to the Government or any Local Authority annually in respect of such property ; and

(*c*) a list giving a full and complete enumeration and description of all incumbrances held by secured and unsecured creditors, respectively, and enforceable against the applicant or the estate ; with the name and address of each such creditor, and a correct statement of the amount due to each such creditor.

Declarations and draft to accompany application in the case of an estate belonging to a joint Hindu family or to co-sharers.

5. (1) If any estate respect of which an application is made under section 3 belongs to—

(*a*) a joint Hindu family, or

(*b*) co-sharers,

the application must be accompanied—

(*i*) a sworn declaration by the applicant,—

in case (*a*), that he is the *karta* or managing member of the family, or

in case (*b*), that he is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, as the case may be, the

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

sole right of management over the estate ; and

(*ii*) a sworn declaration, in case (*a*), by the other co-owners, or in case (*b*) by the other co-sharers, that they are willing to assent to the estate being settled under this Act, and

(*iii*) a draft of the proposed instrument of settlement.

(2) If any of the said other co-owners or co-sharers is, at the time when the application is made, a minor, a declaration under clause (*ii*) of sub-section (1) may be accepted if it is

made on behalf of such minor by the guardian of his property or (when a guardian of his property cannot lawfully be appointed) the guardian of his person, appointed or declared under the Guardians and Wards Act, 1890, or any other law for the time being in force, and

8 of 1890.

approved by an order in writing under the seal of the Court which appointed or declared the guardian.

(3) If any of the aforesaid other co-owners or co-sharers is, at the time when the application is made, a lunatic, a declaration may be accepted under clause (ii) of sub-section if it is

made on behalf of such lunatic by his committee appointed under the Lunacy (Supreme Courts) Act, 1858, or the Lunacy

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

(District Courts) Act, 1858, or any other law for the time being force, and 34 of 1858.

approved by an order in writing under the seal of the Court which appointed the committee. 35 of 1858.

Power to reject application.

6. The Local Government may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order reject any application made under section 3.

Transmission and notification of application.

7. If any application made under section 3 is not rejected under section 6, and if the Local Government is satisfied that the conditions specified in section 3 are fulfilled, and that the provisions of sections 4 and 5 have been duly complied with,

the Local Government shall send a copy of the application, and of the declarations which accompanied it, as also a copy of the draft of the proposed instrument of settlement, to each creditor who is named in the application, and to each person who has made a declaration in pursuance of clause (*ii*), of section 5;

and, with the previous sanction of the Governor General in Council, shall publish a notification—

(*a*) setting forth the application [except the particulars inserted therein in pursuance of clause (*b*) of section 4] and the declarations which accompanied it;

CENTRAL LIBRARY

(*b*) calling upon all creditors, whether secured or unsecured, holding or entitled to incumbrances enforceable against the applicant or the estate to which the application relates, and all other persons interested or claiming to be interested in the estate, to send to the Local Government a written notice of their incumbrances and interests, respectively, within a period of six months from the date of the notification ; and

(*c*) intimating that any objections to the proposed settlement, whether urged by creditors or by other persons interested in the estate, which may be communicated to the Local Government in writing within the said period, will be duly considered.

Rejection of approval application after notification.

8. (1) At any time after the expiration of the said period, and after considering any notices and objections received under section 7 and after such inquiry (if any) as it may think fit to make, the Local Government may, in its discretion, by written order either—

(*a*) reject such application, or

(*b*) grant permission to make the proposd settlement, in respect either of the whole of the property to which the application relates or of any part thereof :

CENTRAL LIBRARY

Provided that, if any incumbrances have been set forth in the application or brought to the notice of the Local Government, such permission shall not be granted unless—

(*i*) the incumbrances are first discharged, or

(*ii*) a condition is made for the insertion in the settlement of provisions, to be assented to by the creditors and approved by the Local Government, for the discharge of the incumbrances, or for their continuance, with or without modification, and for the payment of interest thereon.

(2) If the right of the applicant to make the settlement is disputed by or on behalf of any person interested or claiming to be interested in the estate, the Local Government may, if it thinks fit, refer the matter in dispute to the Civil Court for decision, before determining whether to reject the application or to grant permission to make the proposed settlement; and the Civil Court shall, in dealing with any such reference follow the procedure prescribed in the Code of Civil Procedure for the trial of suits, so far as the same may be applicable. 14 of 1882.

(3) Every decision by the Civil Court under sub-section (2) shall be deemed to be a decree within the meaning of the Code of Civil Procedure; [1] and an appeal therefrom shall lie to the High Court. 14 of 1882.

CENTRAL LIBRARY

Rejection no bar to making fresh application.

9. The rejection under section 6 or section 8 of an application for permission to make a settlement of an estate under the foregoing provisions of this Act shall be no bar to the making of a fresh application in respect of the same estate, if the applicant shows sufficient reason for so doing.

PART III.

PROVISIONS TO BE CONTAINED IN FIRST SETTLEMENTS.

Settlement of estates for three generations.

10. (1) Every settlement made under the foregoing provisions of this Act in respect of any estate shall provide that the estate shall be held for life—

(*a*) by the settlor, as first tenant for life ;

(*b*) and thereafter, by the second tenant for life, who shall be the eldest or only son of the first tenant for life ;

(*c*) and thereafter, by the third tenant for life, who shall be the eldest or only son of the second tenant for life.

(2) Every such settlement shall further provide,—

(*i*) if the estate is one to which the settlor was, immediately before the execution of the settlement, solely entitled —that, after the life of the third tenant for life, the eldest or only son

CENTRAL LIBRARY

of such tenant shall hold the estate absolutely;

(*ii*) if the estate belonged, immediately before the execution of the settlement, to a joint Hindu family—that, after the life of the third tenant for life, the eldest or only son of such tenant shall during his life be the *karta* or manager of the estate, but without prejudice to the rights of any persons who, but for the settlement, would be co-owners of the estate; and

(*iii*) if the estate belonged, immediately before the execution of the settlement, to co-sharers—that, after the life of the third tenant for life, the eldest or only son of such tenant shall have during his life the sole right of management over the estate;

but subject in each case to the terms of any fresh settlement made by a tenant for life in pursuance of permission granted under section 16.

(3) If the eldest or only son of the settlor has predeceased the settler or if the settlor desires to exclude such son from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the Local Government, then, notwithstanding anything contained in the

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

foregoing sub-sections, the Local Government may permit him to provide in the settlement—

(*i*) that the second tenant for life shall be another son of the settlor, if he has another son, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid, and

(*ii*) that the third tenant for life shall be the eldest or only son of the second tenant for life, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid.

(4) Any settlement made under the foregoing provisions of this Act may provide that any tenant for life may, with the previous sanction of the Local Government, by written instrument surrender his interest under the settlement in favour of the next tenant for life.

Further remainders.

11. Every settlement made under the foregoing provisions of this Act may also contain provisions for vesting the estate, in the event of the settlement on the second tenant for life or his son failing to take effect, in some other person descended from the settlor or the settlor's father in the direct male line.

Further provisions in settlements.

12. (1) Every settlement made under the foregoing provisions of this Act shall specify all incumbrances referred to in clause (ii) of section 8.

CENTRAL LIBRARY

(2) Every settlement shall also contain such provisions as may be approved by the Local Government with regard to the following matters, namely :—

(*a*) the discharge of incumbrances on the estate, and the payment of interest thereon ; or their continuance (with or without modification), and the payment of interest thereon ;

(*b*) the maintenance of the co-owners and co-sharers (if any) by or on whose behalf a declaration has been made under clause (ii) of section 5, and of all persons who at the time of the execution of the settlement are, or thereafter may be, legally entitled maintenance out of the estate ;

(*c*) the management of the estate after the death of the settlor—

(*i*) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (*h*) of section 2, or

(*ii*) during the minority of the second tenant for life ;

(*d*) the management of the estate after the death of the second tenant for life—

(*i*) during a period not exceeding five years after such death, pending the

CENTRAL LIBRARY

adoption of a son under the circumstances described in sub-clause (ii) of clause (ii) of clause (*h*) of section 2, or

(*ii*) during the minority of the third tenant for life.

(*e*) the management of the estate after the death of the third tenant, for life—

(*i*) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (*h*) of section 2, or

(*ii*) during the minority of the next holder.

(3) If any settlement made under the foregoing provisions of this Act includes money, securities for money, or movable property, the settlement shall contain such provisions as may be approved by the Local Government for vesting such money, securities or property in a trustee, for the investment or conversion of such money or securities in or into securities authorized by section 20[1] of the Indian Trusts Act, 1882, and for the payment to the trustee of expenses and remuneration in accordance with rules made under section 37, clause (*c*).

2 of 1882.

Explanation.—The Official Trustee of Bengal [2], the Collector or any private person may be appointed to be a trustee for the purposes of this sub-section.

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING ·
CENTRAL LIBRARY

(*4*) In addition to the various matters hereinbefore specified, the Local Government may require or permit the insertion in any settlement made under the foregoing provisions of this Act of any provision which it may think fit, and may make its approval of the settlement conditional on the insertion of provisions which it has required to be inserted :

Provided that no provisions inserted in pursuance of this sub-section shall operate to the prejudice of any secured or unsecured creditor unless assented to by him.

PART IV.

SUPPLEMENTARY SETTLEMENTS AND FRESH SETTLEMENTS.

Supplementary settlement in respect of property.

13. (*1*) At any time after a settlement has been made under the foregoing provisions of this Act, a tenant for life may apply to the Local Government for permission to make a supplementary settlement for the purpose of adding further property to the settled estate—

(*a*) if he is competent to contract,

(*b*) if he is in possession of such property, either in his own right or along with or on behalf of others, and

(*c*) if such property is held in permanent, heritable and transferable right :

(*2*) Provided that no application may be made under sub-section (*1*) in respect of any property—

CENTRAL LIBRARY

(*i*) unless the applicant is solely entitled to the property, or

(*ii*) if the property belongs to a joint Hindu family—unless the applicant is the *karta* or managing member of the family, or

(*iii*) if the property belongs to co-sharers —unless the applicant is a principal shareholder in the property and has, by custom or with the consent of his co-sharers, the sole right of management over the property.

(*3*) The provisions of section 4 to 9 shall apply to every application made under sub-section (*1*) in respect of any property, and the provisions of sections 10 to 12 shall apply to every settlement of such property, as if the property were an "estate" within the meaning of those sections.

Power to apply for permission to make a supplement any settlement in respect of persons.

14. If, at any time after any settlement has been made under the foregoing provisions of this Act, the second tenant for life dies during the life of the settlor, or the settlor desires to exclude him from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the Local Government,

the settlor may, if he is competent to contract, apply to the Local Government for permission to make a supplementary settlement for the purpose of appointing to be second

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

tenant for life and third tenant for life respectively, any other persons who might have been so appointed in pursuance of clauses (*i*) and (ii) of sub-section (*3*) of section 10.

Power to apply for permission to make a fresh settlement.

15. At any time after any settlement has been made under the foregoing provisions of this Act, a tenant for life of a settled estate may, if he is competent to contract, apply to the Local Government for permission to make a fresh settlement of the estate.

Procedure in dealing with applications under section 14 or 15.

16. (*1*) The provisions of section 4, sub-section (*1*), and section 9 shall apply to every application for permission to make a supplementary settlement in respect of persons or a fresh settlement.

(*2*) If any such application relates to an estate to which the settlor was, immediately before the execution of the former settlements, respectively, solely entitled, the Local Government may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order, either—

(*i*) reject the application, or

(*ii*) grant permission to make the proposed settlement.

(*3*) If any such application relates to an estate which belonged, immediately before the execution of the former settlements, respectively, to a joint Hindu family or to co-sharers, the application must be accompanied by a declara-

CENTRAL LIBRARY

tion by all persons (other than the applicant) who, but for such settlements, would be co-owners of or co-sharers in the estate, to the effect that they are willing to assent to the proposed settlement.

(*4*) If any of such co-owners or co-sharers is, at the time when the application made, a minor or a lunatic, a declaration under sub-section (*3*) of this section may be accepted if it is made and approved as indicated in sub-section (2) or sub section (3), as the case may be, of section 5.

(*5*) In every case referred to in sub-section (3) of this section, the Local Government.

shall send a copy of the application, and of the declarations which accompanied it, to each person who has made a declaration in pursuance of that sub-section ;

and, with the previous sanction of the Governor-General in Council, shall publish a notification—

(*a*) setting forth the application and the declarations which accompanied it ;

(*b*) calling upon all persons (other than creditors) interested or claiming to be interested in the estate, to send to the Local Government written notice of their interests within a period of six months from the date of the notification, and

(*c*) intimating that any objections by

CENTRAL LIBRARY

such persons to the proposed settlement, which may be communicated to the Local Government, in writing within the said period, will be duly considered;

and, at any time after the expiration of the said period, and after considering any notices and objections received under this sub-section, and after such inquiry (if any) as it may think fit to make, may, in its discretion, by written order, either—

(*i*) reject the said application, or

(*ii*) grant permission to make the proposed settlement.

Provisions as to fresh settlements.

17. (1) The provisions of sections 10, 11 and 12 shall apply to every fresh settlement made in pursuance of permission granted under section 16.

(2) All property which, immediately before the execution of a fresh settlement in respect of any estate, is included in any former settlement of the estate made under this Act, must be included in such fresh settlement.

(3) No property shall be included in any fresh settlement made under this Act in respect of any estate unless it is, immediately before the execution of such settlement, included in a former settlement of the estate made under this Act.

(4) If any incumbrance, which is dealt with in any former settlement made under this Act

CENTRAL LIBRARY

in respect of any estate, is still in existence at the time of the execution of the fresh settlement shall affect the rights of the creditor unless assented to by him.

(5) Every fresh settlement made under this Act in respect of any estate shall, subject to the foregoing provisions of this section, supersede all former settlements made under this Act in respect of such estate.

PART V.

SETTLEMENTS GENERALLY.

Approval, stamping and registration of settlements.

18. (1) No settlement made under this Acts shall take effect unless the instrument of settlement—

(*a*) is of a non-testamentary character,

(*b*) is attested by two or more witnesses,

(*c*) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government,

(*d*) bears a stamp of the full value prescribed by sub-section (2), or, if the sanction of the Board of Revenue has been given under sub-section (3,) of one-third of such value, and

(e) is registered within three months after the said approval has been certified as aforesaid.

CENTRAL LIBRARY

(2) Every instrument of settlement made under this Act, not being a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15, shall, notwithstanding anything contained in the Indian Stamp Act, 1899 [1] bear a stamp of value equivalent to one-fourth of the annual net profits of the estate comprised in the settlement. 2 of 1899.

(3) Provided that a stamp of one-third of such value may be affixed, with the previous sanction of the Board of Revenue, on arrangements being made to its satisfaction for the affixing of stamps for the rest of such value at subsequent dates within three years from the date of the instrument.

(4) If any question arises, with reference to sub-section (2) or sub-section (3), as to the amount of the annual net profits of any estate, the decision of the Board of Revenue thereon shall be final.

(5) Every instrument making a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15 shall, notwithstanding anything contained in the Indian Stamp Act, 1899, [1] bear a stamp of ten rupees. 2 of 1899.

(6) Subject to the foregoing provisions of this section, every instrument of settlement shall take effect from the date of its execution.

19. (1) No instrument of surrender referred

CENTRAL LIBRARY

Approval, stamping and registration of instruments of surrender.

to in sub-section (4) of section 10 shall take effect unless it—

(*a*) is of a non-testamentary character;

(*b*) is attested by two or more witnesses;

(*c*) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government;

2 of 1899.

(*d*) is stamped in accordance with the provisions of the Indian Stamp Act, 1899 [1], and

(*e*) is registered within three months after the said approval has been certified as aforesaid.

(2) Subject to the foregoing provisions of this section, every such instrument shall take effect from the date of its execution.

10 of 1885.
5 of 1881.
7 of 1889.

Bar to application of succession laws, in respect of property comprised in settlement.

20. (1) Notwithstanding anything contained in the Indian Succession Act, 1865, [2] the Probate and Administration Act, 1881, [3] or the Succession Certificate Act, 1889, [4] it shall not be necessary for any person to obtain probate or letters of administration, or a certificate under the last-mentioned Act, to admit of his taking any property or recovering any debt or realizing any security in virtue of a settlement made under this Act.

7 of 1889.

(2) If any letters of administration or any certificate granted under the Succession Certi-

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

ficate Act, 1889,[4] purports to cover any property, debt or security which is comprised in a settlement made under this Act, then, notwithstanding anything contained in Article 11 or Article 12 of Schedule I to the Court-fees Act, 1870,[5] no court-fee shall be levied under either of those Articles in respect of such property, debt or security. 7 of 1870.

Power of Local Government to grant certificate after death of tenant for life.

21. At any time after the death of any tenant for life of a settled estate, any of the Secretaries to the Local Government may, upon the application of any person claiming a right to hold the settled estate under the instrument of settlement, grant a certificate to such person declaring him to be entitled to hold such estate under such instrument; and such certificate shall be presumed to be correct unless and until the contrary is proved.

Notification of instruments of settlement and instruments of surrender or revocation of settlement.

22. (1) When any instrument or surrender of settlement or revocation of settlement is registered, the registering-officer shall report the fact to the Local Government; and, on receipt of such report, the Local Government shall publish a notification stating the purport of the instrument and the office in which it has been registered.

(2) The Collector shall cause a copy of every such notification to be posted in his office, and to be published on the settled estate at such places and in such manner as may in

CENTRAL LIBRARY

his opinion be sufficient for giving information to tenants and other persons interested.

Abrogation of inconsistent laws.

23. No settlement or part of a settlement made under this Act shall be liable to be avoided or set aside by any Civil Court by reason only that it contravenes—

4 of 1892.

(*a*) any provision of the Transfer of Property Act, 1882, or

(*b*) any law or rule for the time being in force for the prevention of perpetuities, or

(*c*) any family custom or any personal law or law of succession to which the family is subject,

which is inconsistent with the provisions of this Act.

PART VI.

Revocation, Cancellation and Amendment of Settlements.

Revocation of settlement by tenant for life.

24. (1) A tenant for life of a settled estate may, at any time, if he is competent to contract, apply to the Local Government for permission to revoke, either wholly or as respects any particular property, any settlement made under this Act.

(2) The Local Government, after considering the application, and the result of any inquiry made by it or under its orders, and any further particulars or information called for by

CENTRAL LIBRARY

it, may, in its discretion, by written order, either—

(*a*) reject the application, or

(*b*) grant the permission applied for, or

(*c*) grant permission to revoke the settlement as respects such property only as may be specified in the order.

(3) When permission is granted under sub-section (2) to revoke a settlement, either wholly or as respects any particular property, the revocation shall not take effect unless the instrument of revocation—

(*i*) is of a non-testamentary character,

(*ii*) is attested by two or more witnesses,

(*iii*) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government,

(*iv*) is stamped in accordance with the provisions of the Indian Stamp Act, 1899, and

(*v*) is registered within three months after the said approval has been certified as aforesaid.

(4) Subject to the foregoing provision of this section, every such instrument shall take from the date of its execution.

25. (1) Notwithstanding any thing hereinbefore contained, the Local Government may

CENTRAL LIBRARY

Cancellation or amendment of settlement by Local Government.

at any time declare by notification that any settlement made under this Act in respect of a settled estate shall be deemed—

(*a*) to be cancelled, or

(*b*) to be amended so as to exclude any part of the estate described in the notification.

(2) On the publication of such notification the said settlement shall be deemed to be cancelled or amended as aforesaid, as the case may be.

Revival of incumbrances on revocation cancellation or amendment of settlement.

26. When any instrument of settlement is revoked under section 24, or cancelled or amended under section 25, the rights of all persons having incumbrances on the estate shall, notwithstanding anything contained in the Indian Limitation Act, 1877, revive and be enforceable as if the settlement had not been made, but subject to any payments which were made while the settlement was in force.

15 of 1877.

PART VII.

Rights and Powers of Tenant for Life, and Protection of Settled Estate during his Life.

Right of tenant for life to profits of settled estate.

27. All profits of a settled estate, which are realized by a tenant for life, or which, immediately before his death, were due to him but were not realized by him, shall, subject to the other provisions of this Act, belong

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absolutely to such tenant or his heirs, executors, administrators or assigns :

Provided that if any rents due to a tenant for life in respect of a settled estate were in arrear immediately before his death, the same shall, upon his death, notwithstanding anything contained in this Act, or in the Indian Succession Act, 1865, or in any other law, or in any settlement made under this Act, and notwithstanding any will or other disposition made by such tenant, become due to the next holder of the estate. 10 of 1865.

Restriction on alienation by tenant for life.

28. Except as provided in sections 29 and 30, a tenant for life of a settled estate shall not be entitled to transfer by way of sale or gift, or otherwise alienate, or to create any incumbrance upon, or to lease, the estate, or any part thereof, or to assign his right to receive any of the profits thereof.

Sales by tenant for life.

29. (1) A tenant for life of a settled estate may, with the previous written sanction of the Civil Court, sell the estate or any part thereof.

(2) If the estate belonged, immediately before the execution of the settlement, to a joint Hindu family or to co-sharers the Court shall, before determining to accord such sanction, notify the proposed sale to all persons (except the tenant for life) who, but for the settlement, would be co-owners or co-sharers in the estate; and shall hear and duly consider

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

any objection which may be advanced by them or on their behalf.

(3) The proceeds of every such sale shall be paid by the purchaser to the Collector; and shall be held by the Collector in trust to re-invest the same with the approval of the Local Government, in immovable property, which shall, upon such re-investment, be and remain subject to the settlement in like manner as if it had been originally comprised therein.

Leases by tenant for life.

30. (1) A tenant for life of a settled estate may lease the estate or any part thereof from year to year or for any term not exceeding seven years, or (with the previous written consent of the Collector) for any longer term not exceeding fourteen years, or (with the previous sanction of the Local Government) for any longer term of years or in perpetuity.

(2) No premium or fine shall be taken on any such lease granted for a term exceeding seven years, or in perpetuity, except with the previous written consent of the Collector.

(3) When any premium or fine is taken on any lease granted under sub-section (1), then—

(*a*) if the lease is from year to year or for a term of years, a sum equivalent to four-fifths of the amount of the premium or fine, or

(*b*) if the lease is in perpetuity, the whole of the premium or fine shall be paid—

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

(*i*) to the trustee appointed for the purposes of section 12, sub-section (3), or

(*ii*) if no trustee has been so appointed, to a trustee to be appointed for the purpose;

and shall be held by such trustee as part of the settled estate, and shall be invested by him in securities authorized by section 20 of the Indian Trusts Act, 1882: 2 of 1882.

Provided that such trustee may retain, for the payment of his expenses and remuneration, such portion of the amount paid to him as may be authorized by rules made under section 37, clause (*c*).

(4) In respect of every such lease the best rent shall be reserved that can reasonably be obtained.

(5) No payment of any instalment of such rent made to a tenant for life before it falls due shall operate to the prejudice of any subsequent holder of the estate.

Saving of leases of raiyati holdings.

31. Nothing in section 28 or sub-sections (1) and (2) of section 30 shall apply to leases of raiyati holdings.

Bar to sale of settled estate in execution of decree.

32. (1) No settled estate or part thereof shall, during the life of a tenant for life, be sold in execution of a decree of a Civil Court.

(2) If any decree against a tenant for life of a settled estate is not satisfied, the Court may, on the application of the decree-holder,

CENTRAL LIBRARY

appoint a Receiver of such estate or any part thereof, under the provisions of Chapter XXXVI of the Code of Civil Procedure, for the purpose of recovering the amount of the decree and, subject to the rights of any secured creditor over such estate or part, satisfying the claims of the decree holder.

14 of 1882.

(3) An appeal shall lie to the High Court from any order made by a Court under sub-section (2).

11 of 1859.

Sale of settled estate for arrears of land-revenue etc.

33. (1) Notwithstanding anything contained in the Bengal Land-revenue Sales Act, 1859, or any other law, no settled estate or part of a settled estate shall, without the previous sanction of the Local Government, be sold, during the life of any tenant for life thereof, for an arrear of land-revenue or for any other arrear which is recoverable in the same manner as an arrear of land-revenue.

(2) If any settled estate or part of a settled estate be sold, with the sanction required by sub-section (1) of this section, to any person other than the tenant for life, the resulting surplus shall be dealt with in the manner described in sub-section (3) of section 29;

and, if the estate or any part thereof be purchased at the sale by the tenant for life, the resulting surplus shall be paid to the tenant for life, and the estate or part so purchased shall, notwithstanding the sale, continue to be subject to the settlement.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

(3) If the person whose name is entered in any certificate granted under the said Bengal Land-revenue Sales Act, 1859, or any other law, as purchaser of a settled estate of part thereof, is not the tenant for life, the said resulting surplus may be retained by such person, and shall not be payable to the tenant for life, even though it may be claimed that the purchase was made by such person on behalf of the tenant for life. 11 of 1859

Procedure for recovery of such arrears.

34. (1) If any such arrear accrues in respect of a settled estate, or any part thereof, during the life of any tenant for life thereof, and if the sale of the estate of part for the recovery of the arrear is not sanctioned by the Local Government under section 33, the Collector may attach the estate or part,

and shall thereupon be entitled, to the exclusion of all other persons, to receive all rents and other moneys (if any) due to such tenant in respect of such estate or part,

and may manage the estate or part, either directly or through a manager for such period as may be necessary for the recovery of such arrear.

(2) Upon the expiration of the period referred to in sub-section (1), the Collector shall deduct from the proceeds of the management the amount of the said arrear and of any similar arrears that may have accrued during such period, and any interest due thereon, and

CENTRAL LIBRARY

the expenses incurred in the management; and

(*a*) pay the balance of such proceeds to the person then entitled to hold the estate, and

(*b*) furnish such person with an account of the receipts and expenditure during the management, and

(*c*) release the estate or part to such person.

(3) If, after a settled estate or part thereof held by a tenant for life has been managed and released by the Collector under sub-sections (1) and (2), any such arrear as aforesaid again accrues in respect of the estate or part during the life of the same tenant, and if the sale of the estate or part thereof for the recovery of the arrear is not sanctioned by the Local Government under section 33,

Ben. Act 9. of 1879.

the Court of Wards may take charge of and deal with the estate or part under the provisions of the Court of Wards Act, 1879 and may retain such charge until the death of such tenant and, if the next holder is then a minor, until such minor attains his majority;

and the said tenant shall, while the Court of Wards has charge of the estate or part, be debarred from receiving any income from the estate or part, other than such monthly sum as the Court of Wards may allow for the support of himself and his family;

and the powers conferred by sections 28 and

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30 of this Act shall, while the Court of Wards has charge of the estate or part, be exerciseable by the Court of Wards and not by the said tenant.

PART VIII.

MISCELLANEOUS.

Form, publication and duration of permissions granted by Local Government.

35. (1) Every permission granted by the Local Government under section 8, section 10, sub-section (3), section 12, sub-section 13, section 16 or section 24 shall be in writing signed by one of the Secretaries to the Local Government, and shall contain a description of the property or person, in respect of which the permission is granted, sufficient to identify the same.

(2) Every permission granted by the Local Government under section 8, section 13, section 24 shall be published by notification, and shall remain in force until the expiry of twelve months from the date of the notification, or until the death of the applicant, whichever first happens.

Notifications how to be published.

36. Every notification prescribed by this Act shall be published in the Calcutta Gazette and also in such Vernacular Gazettes (if any) as the Local Government may direct.

Power to make rules.

37. (1) The Local Government may, after previous publication, make rules for carrying out the purposes of this Act.

CENTRAL LIBRARY

(2) In particular, and without prejudice to the generality of the foregoing provision, the Local Government may make rules for all or any of the following matters, namely :—

(*a*) the procedure to be followed in submitting an application to the Local Government under this Act :

(*b*) the form and contents of such applications, and the documents (if any) which should accompany them ;

(*c*) the payment to trustees, out of the property, of expenses properly incurred in or about the execution of any trust created under this Act, and of remuneration for their trouble, skill and loss of time in executing any such trust ;

(*d*) the guidance of the Collector in managing estates attached under section 34 ;

(*e*) the payment or recovery of any expenses incurred by the Government in connection with any proceedings taken under this Act.

Ben. Act 9. of 1879. Application of Court of Wards Act, 1879.

38. The provision of the Court of Wards Act, 1879, so far as they are not inconsistent with the terms of settlements duly made under this Act, shall be applicable to settled estates.

Saving of rights of secured creditors.

39. Nothing in this Act shall affect the rights of any secured creditor—

(*a*) if his incumbrances or any of them

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

have not been set forth in the list prescribed by section 4, clause (*c*), or

(*b*) if he has not assented to any condition inserted in a settlement made under this Act for the discharge or continuance of his incumbrances or any of them.

BOMBAY ACT No. III OF 1874

(The assent of the Governor General of India to this Act was first published by the Governor of Bombay on the 5th February, 1875.)

An Act to amend the law relating to hereditary offices.

Whereas it is expedient to declare and amend the law relating to hereditary offices; Preamble.

It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the Bombay Hereditary Offices Act. Short title.

It extends to the regulation districts and to all villages therein, whether alienated or otherwise, so far as its provisions shall not conflict with the terms on which any such alienated village may have been secured to the holder thereof.

Nothing in this Act shall affect the powers of Government to deal with any watan or parts

CENTRAL LIBRARY

of watans, or with the profits thereof, respectively, under Act No. XI of 1852 or Bombay Acts Nos. II and VII of 1863, or any other law at present in force with respect thereto.

2. [*Repeal of enactments.*] *Repealed by Act XII of 1876.*

Application of Parts VI, VII, VIII and IX.

3. Parts VI, VII, VIII and IX shall not apply to hereditary offices of lower degree than patel or kulkarni, nor to watans appertaining to such offices.

Interpretation-clause.

4. In this Act, unless there be something repugnant in the subject or context,—

"wátán-property" means the moveable or immoveable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office ;

it includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise ;

it includes cash payments in addition to the original watan-property made voluntarily by Government and subject periodically to modification or withdrawal :

"hereditary office" means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue or with the village-police, or with the settlement of boundaries, or other matters of civil administration ;

the expression includes such office even

CENTRAL LIBRARY

where the services originally appertaining to it have ceased to be demanded :

the watan-property, if any, and the hereditary office and the rights and privileges attached to them, together constitute the watan :

"watandar" means a person having an hereditary interest in a wátàn ; it includes a person holding watan property acquired by him before the introduction of the British Government into the locality of the watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance ; it includes a person adopted by an owner of a watan or part of a watan, subject to the conditions specified in sections 33 to 35 :

"family" includes each of the branches of the family descended from an original watandar ; Provided that no sub-division shall be recognized except as hereinafter provided in section 26 :

"head of a family" includes the chief representative of each branch of a family :

"representative watandar" means a watandar registered by the Collector under section 25 as having a right to perform the duties of a hereditary office :

"officiator" means the person actually performing the duties of an hereditary office for the time being, whether he be a representa-

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

tive watandar or a deputy or a substitute appointed under any of the provisions of this Act.

"guardian" means a relation or other person to whom the care, nurture or custody of any child falls by natural right or recognized usage, or who has accepted or assumed directly the care, nurture or custody of any child, or in case of dispute the holder of a certificate of guardianship from a competent Court.

PART II.

WATAN-PROPERTY AND PROFITS THEREOF.

Prohibition of alienation of wátán and wátán rights.

5. (1) Without the sanction of Government it shall not be competent—

(*a*) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any wátán, or any part thereof, or any interest therein, to or for the benefit of any person who is not a watandar of the same watan;

(*b*) to a representative watandar to mortgage, charge, lease or alienate any right with which he is invested, as such, under this Act.

(2) In the case of any watan in respect of which a service commutation settlement has been effected, either under section 15 or before that section came into force, clause (a) of this

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section shall apply to such watan, unless the right of alienating the watan without the sanction of Government is conferred upon the watandars by the terms of such settlement or has been acquired by them under the said terms.

Collector may institute legal proceedings for protection of wátán.

6. *Clause* 1.—In any case in which it shall appear to the Collector that the institution of legal proceedings is requisite or desirable with respect to any watan, or the estate, property, funds or affairs thereof, the Collector shall certify such case in writing under his hand to the Commissioner, together with such statements and particulars as in his opinion may be requisite or proper for the explanation of such case, and thereupon the said Commissioner, if upon consideration of the circumstances he thinks fit, shall authorize the Collector to institute and prosecute in the name of the Collector such legal proceedings as may appear requisite or proper for the protection of the watan, its estates, property, funds or affairs, by suit or petition in any Civil Court having jurisdiction in the matter. The cost of such proceedings, unless recovered from the opposite party, shall be paid out of the funds of the watan.

Collector may proceed under sections 8 to 11, or 13.

Clause 2.—The Collector may, if he thinks fit, proceed as provided in sections 8, 9, 10, 11 or 13 in lieu of instituting or prosecuting legal proceedings under this section.

CENTRAL LIBRARY

Wátán assigned as remuneration not alienable without sanction.

7. Watan-property assigned under section 23 as remuneration of an officiator, and the profits of watan-property so assigned, shall not be alienated or assigned to any person whatever without the sanction of Government.

Wátán property passed into possession of person other than officiator liable to contribution for remuneration of officiator.

8. Whenever any watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have before the date of this Act coming into force passed by virtue of, or in execution of, a decree or order of any British Court into the ownership or beneficial possession of any person other than the officiator for the time being, or has or have before such date passed otherwise than by virtue of, or in execution of, a decree or order of any British Court into the ownership or beneficial possession of a watandar other than such officiator; or

when any watan, or part or profits thereof, not being assigned as remuneration of an officiator, has, after the date of this Act coming into force, passed by virtue of, or in execution of, a decree or order of any British Court or otherwise, into the ownership or beneficial possession of a watandar other than such officiator;

such watan or any part thereof, or any of the profits thereof, shall be liable under the orders of the Collector to contribution for the remuneration of such officiator in like manner and to the like extent as if no such decree had

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

been passed or no such transfer had taken place.

9. *Clause* 1.—Whenever any watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have, before the date of this Act coming into force, passed otherwise than by virtue of, or in execution of, a decree or order of any British Court, and without the consent of the Collector and transfer of ownership in the revenue-records, into the ownership or beneficial possession of any person not a watandar of the same watan, the Collector may, after recording his reasons in writing, declare such alienation to be null and void, and order that such watan or any part thereof, or any of the profits thereof, shall from the date of such order belong to the watandar previously entitled thereto, and may recover and pay to such watandar any profits thereof accordingly.

Collector may declare alienation of wátán-property to be under certain circumstances null and void.

Clause 2.—If such part of a watan be land, it shall be lawful for the Collector, instead of transferring the possession of the land, to demand and recover the full rent ordinarily paid by tenants of land of similar description in the same locality, and the amount so recovered shall be considered as the profits. The decision of the Collector as to what is the full rent shall be final.

Collector may in case of land recover full rent.

10. When it shall appear to the Collector

CENTRAL LIBRARY

Civil Court on Collector's certificate, to remove attachment on wátán-property assigned as remuneration of officiator.

that by virtue of, or in execution of, a decree or order of any British Court any watan or any part thereof, or any of the profits thereof, recorded as such in the revenue-records or registered under this Act, and assigned under section 23 as remuneration of an officiator, has or have after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such watan or any part thereof, or any of the profits thereof, not so assigned, has or have so passed or may pass into the ownership or beneficial possession of any person not a watandar of the same watan, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a watan or part of a watan, or that such property constitutes the profits or part of the profits of a watan, or is assigned as the remuneration of an officiator, and is therefore inalienable, remove any attachment or other process then pending against the said watan or any part thereof, or any of the profits thereof, and set aside any sale or order of sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said watan or any part thereof, or any of the profits thereof.

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Collector may declare null and void alienation of wátán-property made after passing of Act.

11. When any alienation of the nature described in section 10 shall take place otherwise than by virtue of, or in execution of, a decree or order of any British Court, the Collector shall, after recording his reasons in writing, declare such alienation to be null and void.

Resumption of property to which an order made under section 10 or section 11 applies.

11A. The Collector shall either summarily resume possession of all property to which an order of a Court passed on receipt of his certificate under section 10, or his own declaration under section 11, relates, or assess it at the rate prescribed in clause (2) of section 9, as he may think fit, and the said property shall thenceforward revert to the watan.

Powers of Collector to carry out provisions of sections 8, 9 and 11.

12. It shall be lawful for the Collector, whenever it may be necessary, in carrying out the provisions of sections 8, 9 and 11.

(*a*) to summarily evict any person wrongfully in possession of any land, or

(*b*) to levy any rent due by any person in the manner that may be prescribed in any law for the time being in force for the levy of a revenue demand.

Wátán assigned as remuneration not liable to process of Court.

13. Watan-property as signed as remuneration of an officiator under section 23 and the profits of such watan-property are not liable to process of any Civil Court.

On receipt of a certificate under the hand and seal of a Collector, to the effect that certain property designated therein is watan-property

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

so assigned, the Court shall remove any attachment or other process placed on, or set aside any sale of, or affecting, such property or the profits thereof.

Combination of hereditary offices.

14. *Clause* 1.—It shall be lawful for a Collector, for reasons to be stated in writing, to combine two or more watans held for the performance of similar services in the same village or parts of the same village.

Clause 2.—[*Validation of prior combinations*]. *Repealed by Act XVI of 1895.*

PART III.

COMMUTATION OF WATANS.

Commutation of service.

15. *Clause* 1.—The Collector may, with the consent of the holder of a watan, given in writing, relieve him and his heirs and successors in perpetuity of their liability to perform service upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon by the Collector and such holder.

Clause 2.—[*Validation of prior settlements*]. *Repealed by Act XVI of 1895.*

Settlement on whom to be binding.

Clause 3.—Every settlement made or confirmed under this section shal be binding upon both Government and the holder of the watan and his heirs and successors.

Who is a 'holder.'

Clause 4.—The word "holder," for the purposes of this section, includes any sole owner

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

or the whole number of joint owners or any person dealt with as representative of the persons beneficially interested or entered as such in the Government-records at the time of the settlement.

Rights of individuals to exact customary service from village-servants not affected.

16. Nothing in the last preceding section shall be held to affect any rights of individuals or village-communities to exact such service as may be customary from village-servants whose watans were originally granted or are now held for the performance of such service, but who have been relieved by Government of liability to perform such service to the State.

Assessment of amount of payments in alienated villages.

17. When all or any of the property of a watan consists of payments of whatever description, whether in money or kind, made by jagirdars, inamdars, mehwassi chiefs, or others owning or occupying immoveable property, wholly or partially free from assessment, the Collector may from time to time determine the amount of such payments recoverable: Provided that no larger demand shall be made than one equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages.

Appointment of panchâyat to define rights and duties of certain classes of wátándars.

18. When all or any of the property of a village-watan of lower degree than that of patel or kulkarni consists of a right to levy in money or kind directly from individuals, it shall be lawful for the Collector, on the application of any person interested, to cause the

CENTRAL LIBRARY

nature and extent of such right and of the duties to be performed, and the persons, families or classes liable to make payment and to perform the duties, to be defined in writing by a panchayat of five persons, whereof two shall be appointed by the villagers, two by the watandars, and one, who shall be sar-panch, by the Collector.

The decision shall be in accordance with the opinion of the majority of the panchayat: Provided that, in case the villagers or the watandars fail to nominate members within seven days, the Collector shall appoint such members as may be required to constitute a panchayat of five:

Provided also that, in case the panchayat do not come to a decision within seven days from the appointment of the sar-panch, the collector may himself pass a decision.

The decision of the panchayat or of the Collector, as above provided, shall be final and binding on all persons or classes whose rights, duties or liabilities have been submitted to such decision.

Mode of fixing amount payable when profits of wátán fluctuate.

19. Whenever, on failure of the panchayat to come to a decision, the Collector, acting under the last preceding section, passes a decision, and it appears that the profits of the watan or part thereof are of fluctuating amount, or are payable in kind, it shall be lawful for the Collector to determine the amount payable

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

and to decide whether the payment shall be made in kind or money.

Validity of settlements made prior to passing of Act.

20. Any settlement of the nature described in sections 17, 18 or 19 made before the date of this Act coming into force, by a Collector or other officer duly authorized by Government, shall have the same force as if made under this Act.

Settlements for such period as Government may direct.

21. Settlements of the nature described in sections 17, 18 and 19 made after this Act comes into force, shall be made for such periods as the Governor in Council may from time to time direct.

PART IV.

Creation and Lapse of Watans.

Creation of new wátáns.

22. When no watan exists, it shall be lawful for Government to create one, and in so doing to assign, subject to such sanction as may be required by any law, or order of the Governor General of India in Council, for the time being in force, such property of Government as to Government may seem fit.

Such watan shall be subject to all the provisions of this Act, and the watandars shall exercise the powers and perform the duties conferred and imposed by this Act or any other law for the time being in force.

When a watan or part of a watan has lapsed or has been confiscated or otherwise

CENTRAL LIBRARY

lawfully resumed by Government, or when the right of any particular family to hold a watan does not exist or is not established, it shall be lawful for Government, subject to the sanction mentioned in the first clause of this section, to assign such watan or part of a watan to such person or persons as to Government may seem fit.

PART V.

Remuneration of Offciators.

Collector to fix emoluments of.

23. Subject to the provisions of this Act and of any other law for the time being in force regarding service-inams, cash allowances and pensions, it shall be the duty of the Collector to fix the annual emoluments of officiators appointed under the provisions of this Act, and to direct the payment thereof to the officiators for the time being.

Collector may assign wátán property for purpose.

It shall be lawful for the Collector for this purpose to assign watan property, or the profits thereof, towards the emoluments of officiators.

The existing assignments shall, until altered by competent authority, be taken to have been made under this section.

With the sanction of Government the Collector may, as occasion arises, after the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proportion to

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

the profit derived by such holders respectively from the watan.

PART VI.

REPRESENTATIVE WATANDARS.

Duties to be performed by representative wátándárs.

24. The duties appertaining to any hereditary office shall be performed by the representative watandars or by deputies or substitutes as hereinafter provided, and by no other persons.

Determination and registration of representative wátándárs.

25. It shall be the duty of the Collector to determine, as hereinafter provided, the custom of the watan as to service and what persons shall be recognized as representative watandars for the purpose of this Act, and to register their names.

Previous practice to be considered in determining who are representative wátándárs.

26. In determining what heads of families shall be recognized as representative watandars and what is the custom of the watan as to service, the Collector shall inquire into and take into consideration the practice heretofore observed from the earliest period for which there are records or other evidence available:

Provided that he shall not be bound to recognize appointments or subdivisions which have been made subsequently to the introduction of Act No. XI of 1843, and which he considers to be contrary to the custom of the watan.

27. If it shall appear to the Collector that

CENTRAL LIBRARY

Registration of head of family as so be representative wátándár.

the custom has been for a member of one family only to serve, the Collector shall register the name of the head of such family only as the representative watandar and no other person.

Registration of heads of fmilies as representative wátándárs.

28. If it shall appear to the Collector that the custom has been for a member of each of several families to perform the duties either contemporaneously or for successive periods, the Collector shall register the name of the head of each of such families as representative watandars and no other persons, and, where the practice of service in successive periods is proved to exist, he shall decide the order in which the representative watandars shall officiate.

Registration of head of eldest family as sole representative wátándár.

29. *Clause* 1—Where the practice of service in successive periods appears to have existed, but is not proved to the satisfaction of the Collector to have existed at the date of the introduction of Act No. XI of 1843, or when the practice of selection by the Collector from several families prevails, he shall determine who is the head of the eldest family descended from the original watandar, and shall register his name as sole representative watandar.

Registration of heads of separate families as representative wátándárs.

Clause 2.—In cases where such several families are not descended from a common ancestor, the Collector shall register as representative watandars the heads of such families, and establish the practice of service in successive periods.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Registration as representative wátándar of head of each family in amalgamated wátán.

30. When the practice of service in successive periods has been introduced under the British rule, in consequence of the reduction in the number of officiators or the amalgamation of watans by Government, the head of each family that formerly officiated shall be separately entered as a representative watandar.

Procedure if heads of families agree as to who are representative wátándárs.

31. But, if in any case described in section 29, the heads of families at any time before the completion of the register prescribed by this Act agree unanimously in writing, or have in writing agreed during the inquiry made in the preparation of the existing registers, as to who are the representative watandars, and as to the order of service, then the register prescribed in this Act shall be prepared in accordance with such agreement.

Right of service to remain after relinquishment of property.

32. When watan property or profits have been voluntarily relinquished without abandonment of right of service, such right of service shall be dealt with as if the watandars were still in receipt of such emoluments.

Notice of adoption if heir has been adopted prior to passing of Act.

33. If any case in which, before the coming of this Act into force, any registered representative watandar or his widow shall have adopted an heir, notice of the same shall, within twelve months from the coming into force of this Act, be given by or on behalf of such adopted heir to the Collector, who shall register the name of such heir accordingly.

But if such adoption shall be shown to have

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

been or shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register.

Notice of adoption when heir adopted after passing of Act.

34. In any case in which, after the coming of this Act into force, any registered representative watandar or his widow shall adopt an heir, report of such adoption shall within three months be made to the Collector by such watandar, or by his widow, or in case of their death then by such adopted heir, or by the guardian of the latter, and the Collector shall register the name of such heir accordingly.

But if such adoption shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register.

Procedure if notice of adoption not duly given.

35. In any case in which notice or adoption report of such shall not be made as herein directed, the Collector shall not recognize the same without the production of a certificate of heirship, or of a final decree of a competent Court establishing the validity of such adoption.

Death of representative watandar to be reported; name of heir to be registered.

36. When any representative watandars dies it shall be the duty of the patel and village-accountant to report the fact to the Collector; and the Collector shall, if satisfied of the truth of the report, register the name of the eldest son or other person appearing to be nearest heir of such watandar as representative watandar in place of the watandar so deceased.

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A certificate of heirship or a decree of a competent court shall, until revoked or set aside, be conclusive proof of the facts stated or determined in such certificate or decree.

Guardian of minor watandar to perform duties of minor.

37. When any head of a family or representative watandar is under the age of eighteen years, his guardian may, subject to the provisions of section 51, exercise all powers and perform all duties conferred and imposed by this Act.

PART VII.

Periods of Service.

Representative watandars to serve for life or for fixed periods of five or ten years.

38. Subject to the provisions of sections 45 and 46, representative watandars shall be entitled to office for the following periods, respectively, (namely) :—

(*a*) in case falling under section 28 or section 29, clause (2), or section 30 or section 31, in which the representative watandars are entitled to office contemporaneously, and in cases falling under section 27 or section 29, clause (1), } for life.

(*b*) in cases falling under section 28 or section 29, clause (2), or section 30 or section 31, in which the representative watandars are entitled to office in successive periods. } for such period as the Collector shall in each case determine, the same being not less than five nor more than ten years.

CENTRAL LIBRARY

Procedure on death of officiator.

39. In the event of the officiating watandar dying before the expiration of his fixed period of service, his heir shall, subject to the provisions of Part VIII, be entitled to officiate for the remainder of that period.

Election of officiator in rotation watan.

40. *Clause* 1.—In the case of a watan in which the representative watandars are entitled to perform the duties in successive periods, the Collector shall, on the occurrence of the turn of any such representative watandar to perform the duties, issue a notice to the whole body of registered representative watandars calling upon them to appear before him at a certain time and place to elect an officiator, or such number of officiators as may be required by the Collector under the provisions of section 43.

Clause 2.—If not less than three-fourths, including the watandar whose turn it is to officiate, of the representative watandars appear at the appointed time and place and unanimously nominate a fit and proper person or persons being a watandar or watandars of the same watan, the person or persons so nominated shall be entitled to officiate in the place and for the period of service of the representative watandar whose turn it is perform the duties.

Clause 3.—If the person or persons so nominated be other than the representative watandar whose turn it is to perform the duties, he or they shall for all the purposes of

CENTRAL LIBRARY

this Act, be deemed to be the duly appointed deputy or deputies of the said representative watandar.

Mode of appointment if representative watandars fail to nominate officiator.

41. If, in the case of a watan in which the representative watandars are entitled to perform the duties in successive periods, the representative watandars shall not appear at the time and place appointed under the provisions of the last preceding section, or shall fail to nominate an officiator, or the requisite number of officiators, unanimously, then the provisions of this Act as to service by the representative watandar entitled to officiate and as to appointment of deputies shall apply.

PART VIII.

Officiating Watandars and Deputies.

Representative watandar to perform duties of office.

42. Every representative watandar whose duty it is to officiate shall, if a fit and proper person, perform the duties of the hereditary office himself on being so required by the Collector, but may be permitted by the Collector to appoint a deputy.

Collector to determine number of officiators required.

43. The Collector shall determine the number of officiators required for the proper performance of the duties of any office from time to time, and for this requirement may call upon the representative watandar aforesaid to appoint a sufficient number of fit and proper persons as deputies, or may direct service in

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

successive periods by representative watandars who have hitherto served or are serving contemporaneously.

Collector to appoint deputy if watandar fails.

44. If any requisition of the Collector under sections 42, 43, 46 or 48 is not complied with within two months from the date thereof, the Collector may himself appoint a deputy or deputies.

Collector when to refuse service of representative watandar or of deputy nominated by him.

45. The Collector shall refuse to accept the service of any representative watandar or of an person nominated by a representative watandar to be his deputy, if such representative watandar or person—

(*a*) is under eighteen years of age ;

(*b*) has not passed such educational test, if any, as Government think fit from time to time to prescribe in this behalf ;

(*c*) has attained sixty years of age, except when such person's appointment or continuance in office is specially permitted by the Collector ;

(*d*) is in the opinion of the Collector disabled by lunacy or imbecility of mind, or by deafness, blindness or other permanent infirmity of body ;

(*e*) has been adjudged by the Collector after a summary inquiry held in accordance with the provisions relating to summary inquiries contained in the Bombay Land-revenue Code, 1879, to be of general bad character ;

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

(*f*) has been sentenced by a Criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or quashed, and whose disqualification on account of such sentence has not been removed by an order which the Governor in Council is hereby empowered to make, if he shall think fit, in this behalf;

(*g*) declines to forsake, whilst officiating, some other employment which is, in the opinion of the Collector, incompatible with the due discharge of the duties of the office.

Procedure when representative watandar or his deputy is unfit to officiate.

46. If a representative watandar whose duty it is to officiate is, or at any time becomes, unfit to officiate for any of the reasons set forth in the last preceding section, the Collector shall call upon him to appoint a deputy, or, if he is disabled by lunacy or imbecility of mind, the Collector shall himself appoint a deputy.

If a deputy so appointed becomes unfit to officiate for any of the reasons aforesaid, the Collector shall call upon the representative watandar to appoint another, or himself appoint another; as the case may be.

A deputy appointed by a representative

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watandar may at any time be removed from office by the Collector at the request of the representative watandar, if, in the opinion of the Collector, there are good grounds for such request.

On cessation of disqualification, representative watandar entitled to serve.

47. Whenever a representative watandar whose duty it is to officiate cases to be disqualified under the provisions of sections 45 and 46 he shall become entitled, if otherwise fit, to serve in person or to appoint a deputy in supersession of any deputy appointed by the Collector.

Second nomination of deputy.

48. In the case of any nomination of a deputy, the Collector shall allow a second nomination to be made in case of his rejecting the first nomination, and, if he shall reject the second nomination, he shall himself appoint a deputy.

Representative watandar may officiate for deputy removed.

49. The respresentative watandar whose duty it is to officiate may himself, if otherwise fit, perform the duties in place of any deputy removed or rejected by the Collector, or deceased.

Collector may nominate deputy if representative watandar rejected or removed.

50. When a representative watandar has been rejected as being of general bad character, or removod on account of grave misconduct under the provisions of section 58, the Collector himself may nominate and appoint a deputy.

Female can not officiate, but may nominate deputy.

51. No female shall perform in person the duties of any hereditary office; but if a representative watandar, or the guardian of a re-

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presentative watandar, she may appoint a deputy.

Collector to appoint deputy when officiator suspended.

52. During the suspension of an officiating representative watandar or deputy, and during any vacancy, the duties shall temporarily be performed by a substitute, whether a watandar or not, appointed by the Collector.

Deputy must ordinarily be a member of the same family as the representative watandar whose duty it is to officiate.

53. Except as is otherwise provided in the last preceding section and in section 56, and except as the Governor in Council shall by a general or special order from time to time otherwise direct, every deputy appointed under this Act shall be a member of the same family to which the representative watandar whose duty it is to officiate, belongs, if there be a member of such family fit and willing to officiate.

If a representative watandar declines to appoint as his deputy any such person as aforesaid, the appointment shall be made by the Collector.

Term of appointment of deputy.

54. When the Collector appoints a deputy, it shall be for a term not exceeding five years.

When a watandar entitled to officiate appoints a deputy, it shall be for a term not less than five years, or for life.

The term of appointment of a deputy shall cease and determine on the right of his principal ceasing, or on the death of his principal, and any appointment of a deputy on behalf of a representative watandar under the age of

CENTRAL LIBRARY

eighteen years shall terminate on the attainment by such representative watandar of that age.

Officiator if absent or ill may appoint substitute.

55. In the event of temporary absence or illness, an officiator may arrange with any fit person for the temporary conduct of the duties, but shall be liable in the penalties prescribed in sections 57 to 61.

Head of family when to be treated as watandar.

56. When the hereditary right to perform the duties of an hereditary office as deputies of the original watandar is vested in a family distinct from that of the original watandar, the custom shall be recognized, and the heads of the family entitled to perform the duties shall be registered and treated as representative watandars.

PART IX.

PENALTIES.

Punishment of officiators.

57. It shall be lawful for the Collector to suspend any officiator from office during inquiry into alleged misconduct, and to punish any such officiator for misconduct or neglect of duty by suspension from office for a period not exceeding six months, or by fine not exceeding the fourth part of the annual emolument provided for the officiator.

The order of the Collector shall be final in such cases, except when the penalty is inflicted on an hereditary district-officer.

CENTRAL LIBRARY

Collector may remove officiator with sanction of Government.

58. It shall be lawful for the Collector, with the previous sanction of Government, in case of fraud, the wilful framing of incorrect records, habitual neglect of duty, or other grave misconduct on the part of an officiator, to remove him from office.

Officiator removed from office ineligible for re-employment.

59. Whoever is removed from office under the preceding section shall be ineligible for re-employment or continuance in any hereditary office, except with the sanction of Government, and in case he be a representative watandar, and his period of performing the duties recurs, the appointment of a deputy under the provisions of Part VIII shall, on the recurrence of such period, be made by the Collector and not by him.

Government may direct forfeiture of a watan.

60. When any representative watandar, or any deputy or substitute appointed by him, is convicted by a Criminal Court, not inferior to a Court of Session, of any offence in the discharge of his official duties, or of any of the offences specified in the second schedule, or of the abetment of any such offence, and such conviction is not subsequently reversed or quashed, the Governor in Council may direct the forfeiture of the whole or of any part of the watan. Such forfeiture may be either absolute or for such period as the Governor in Council thinks fit.

61. All deputies appointed under this Act shall be subject to the same rules in the per-

CENTRAL LIBRARY

Forfeiture of life-interest of officiator and deputy for misconduct of deputy.

formance of the duties of their offices, and to the same penalties, except as otherwise provided, as the representative watandars themselves are subject to when officiating, and, in the case specified in section 58 of this Act, it shall be lawful for Government to direct the forfeiture of the life-interest in the watan of the representative watandar entitled to officiate, whether the officiator guilty of misconduct be such representative watandar himself or a deputy appointed by him.

Order to be passed after invistigation.

62. No order shall be passed under this Part except upon perusal of the judgment of a Court or after investigation recorded in writing.

PART X.

Inferior Village Hereditary Offices.

Application of Part X.

63. This Part applies only to hereditary village-offices of lower degree than that of patel or kulkarni.

Powers granted to Collector.

64. The Collector is empowered, subject to the general control of Government—

(*a*) to register the names of individual watandars as holders of the office or to register it as held by the whole body of watandars:

(*b*) to determine, when individual names are so registered, the rights, duties and responsibilities among themselves of the persons of registered, and the

CENTRAL LIBRARY

mode in which they shall be selected to perform the duties, whether by selection by the Collector or by defined rotation, or by election by the watandars, or otherwise, as may be expedient :

(*c*) to require, in cases where the registration is made in the name of the whole body of watandars, that they appoint so many fit persons as may be necessary to perform the duties which the Collector may assign to them severally and jointly ; such appointment to be made within a reasonable time to be previously fixed and notified to them by the Collector ; in default of such appointment being made, the Collector may himself appoint :

(*d*) to provide for and enforce the joint responsibility of the whole body for the neglect of duty or misconduct of any of their number or their representatives ; and, in case where the crime of cattle-poisoning is prevalent, with the sanction of Government to attach, during the pleasure of Government, the watans of the persons whom he may have reason to believe to have been guilty of, or to have connived at, the commissions of the crime :

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

(*e*) to pass orders in regard to appointment, remuneration, period of service, suspension, fining and dismissal of persons officiating, the grant of leave of absence and other matters of discipline not expressly provided for by this or any other law for the time being in force.

PART XI.

The Register.

Collector to prepare and keep register.

65. The Collector shall prepare and keep all registers necessary for the purposes of this Act in the form which Government may from time to time prescribe. There shall be one register of lands and allowances in consideration whereof liability to perform service exists, and another of lands and allowances in respect of which no such liability exists.

Non-service register what to contain.

66. In the register of lands and allowances the holders whereof are exempt from service, the Collector shall specify—

(*a*) the area of the lands, the survey-number and assessment, the quit-rent leviable, and the nett revenue alienated by Government:

(*b*) the amount and nature of the cash or other allowances, and the source from which they are payable:

(*c*) the terms of the settlement under which the exemption is enjoyed:

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(*d*) the names of the parties to such settlement with Government as indicated in the sanads issued to them :

(*e*) such other particulars as Government may from time to time order to be recorded.

Service register what to contain.

67. In the register of lands and allowances in consideration whereof liability to serve still exists, the Collector shall specify—

(*a*) the area of the lands, the names of the occupants, the survey number and assessment, the quit-rent, if any, leviable, and the nett revenue alienated by Government, the amount and nature of the cash or other allowances, the source from which they are payable, and the land and allowances assigned, for the remuneration of officiators :

(*b*) the names of the heads of families and of the representative watandars :

(*c*) whether the service is performed by one representative watandar or otherwise : if by several in successive periods, the order in which they are to succeed each other :

(*d*) the proportional share of the watan possessed by each head of family which may be expressed in annas or fractions of a rupee :

CENTRAL LIBRARY

(*e*) the number of officiators required to perform the duties :

(*f*) the nature of the settlement of inferior village-watans referred to in Part X :

(*g*) such other particulars as Government may (from time to time) order to be recorded.

Register to be corrected.

68. The register kept under this Act shall be corrected or added to on the occasion of any change being made in accordance with the provisions of this Act in the particulars above specified.

PART XII.

MISCELLANEOUS.

Service to be performed by watandars.

69. All watandars of whatever denomination whose liability to serve has not been commuted are legally bound, subject to the provisions of this Act, to render such service as has been customary or as is required by law.

Watan records the property of Government.

70. All records which have been or may be prepared by any watandar or by any officiator in an hereditary office in pursuance of the duties of the office, or by order of a superior officer or of the present or former Government, are hereby declared to be the property of Government, and the Collector may enforce their production or the production of any State records in the possession of a watandar or of an officiator, in accordance with the provision of

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

sections 25 and 26 of the Bombay Land-revenue Code, 1879.

71. With regard to hereditary offices not inferior to that of patel or kulkarni, it is hereby declared that every head of a family shall have the privilege of signing the abstract of village-land and revenues or other village-papers which it may be customary for him to sign.

Watandars may sign village-records.

PART XIII.

PROCEDURE AND APPEALS.

72. *Clause* 1.—It shall be lawful for the Collector or other officer conducting an investigation under this Act to take evidence, and in sections 193 and 228 of the Indian Penal Code the words "judicial proceeding" shall be take to include any proceeding under this Act.

Evidence to be taken.

Clause 2.—Every person who shall have been summoned to give evidence or to produce any document in his possession, by the Collector or other officer conducting an investigation under this Act, shall be legally bound to attend or to produce such document.

73. *Clause* 1.—Except as hereinafter provided in clause 2 of this section, no order under Part III directing commutation of a watan, or under Part V assigning the remuneration of officiators, or under Part VI determining the custom of the watan as to service and what persons should be registered as heads of families or representative watandars, or under Part VII determining the

Orders under Parts III, V, VI and VII to be passed after investigation in writing.

CENTRAL LIBRARY

periods of service, shall be passed, unless after an investigation, recorded in writing and a proper opportunity afforded for the hearing of claims and the production of evidence.

In each such investigation, and in removals from office under section 58 the Collector or other officer shall records his decision with the reasons therefore in his own handwriting.

Certain decisions passed since 1866 to be accepted in lieu of fresh investigation.

Clause 2.—Unless the Governor in Council shall otherwise direct, decisions passed subsequently to the year 1866 after an investigation recorded in writing, and after a proper opportunity had been afforded for the hearing of claims and the production of evidence, and which are recorded with the reasons therefore, in the handwriting of a Collector or his assistant or deputy, shall accepted, in so far as they may not be inconsistant with the provisons of this Act, in lieu of fresh investigation and decision under this Act for the purpose of framing the register required in section 67.

If any details necessary for the said register have not been recorded in any decision of the nature described above, but are forthcoming from the evidence taken in connection with such decision, they may be supplied from such evidence in lieu of fresh investigation for the completion of the register.

Such details as may not be forthcoming shall be obtained by such further investigation as the Collector may deem necessary.

CENTRAL LIBRARY

Control of proceedings of Collector.

74. The proceedings of the Collector shall be under the general control of the Commissioner and of Government.

Mamlatdar may make investigation under Part X.

75. The Collector may require any investigation under Part X to be made by a mamlatdar or mahalkari, but the decision thereon shall be made by the Collector.

No appeal to lie save where specially provided.

76. No appeal shall lie from any order made under section 64, clause before final order, nor from any order registering any fact specified under section 67, clauses (*b*), (*c*), (*d*) and (*e*) where the effect of such order is merely to register the same facts as are already recorded in the existing register kept according to law or under the order of Government.

Appeals.

77. Except as hereinbefore provided, one appeal only shall lie from every decision passed after investigation recorded in writing by a Collector, or by an Assistant Collector or Deputy Collector.

Such appeal, if from the decision of an Assistant Collector or Deputy Collector, shall lie to the Collector, and shall be made within sixty days from the date of the order appealed against.

Such appeal, if from the decision of the Collector, shall lie to the Commissioner, and shall be made within ninety days from the date of the order appealed against.

In computing the above periods the time

CENTRAL LIBRARY

required to prepare a copy of the order or decision appealed against shall be excluded.

Copy of order to accompany petition of appeal. Appeal may be summarily rejected.

78. Every petition of appeal shall be accompanied by a copy of the order or decision appealed against: and it shall be competent for the officer before whom the appeal is presented to reject the appeal if on perusal of the petition it appears to him that there is no sufficient ground for questioning the correctness of the decision, or for interfering with the order appealed against.

Government may call for proceedings.

79. Government may call for and examine the record of the proceedings of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed, and may reverse or modify the order as shall seem fit, or, if it seem necessary, may order a new enquiry.

Notice how to be served.

80. Service of any notice given under this Act shall be deemed to have been made by the notice being affixed in writing to the wall of the village chaunri or other public place in the village not less than seven days before action is required to be taken by any person thereon.

Recoveries how made.

81. All recoveries of profits from land, assessments, emoluments or penalties under this Act may be made as provided by any law for the time being in force relating to the recovery of the land-revenue.

Government to frame rules.

82. Government may frame rules not inconsistent with this Act for the guidance of its officers in cases not expressly provided for, and

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

may from time to time modify or revoke any such rules.

Government to determine duties of hereditary officers.

83. Except as is otherwise provided in section 18, Government shall have power, in cases where doubt exists, to determine what duties appertain to any hereditary office.

Grant of powers to special officer.

84. The Governor in Council may from time to time confer on any officer specially selected for the purpose or, so far as concerns any alienated village, on the holder or on any of the holders of such village or on any agent of the holder of such village, all or any of the powers and duties which under this Act are required to be performed by a Commissioner or a Collector, and may authorize the delegation to any mamlatdar or mahalkari of the power to fine hereditary village-officers in sums not exceeding two rupees.

Powers and duties conferred under this section shall be exercised or performed subject to such conditions, if any, in addition to those specified in this Act, as the Governor in Council shall from time to time think fit to prescribe, and any order conferring powers and duties under this section may at any time be cancelled by the Governor in Council.

Act not to affect Bombay Act VIII of 1867.

85. Nothing in this Act contained shall be deemed to affect Bombay Act VIII of 1867 or any other law for the time being in force, defining the duties and powers of village-officers or imposing penalties for misconduct; and all

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

references in such laws to Act XI of 1843 shall be taken as made to this Act.

BOMBAY ACT No. V OF 1886.

(The assent of the Governor General of India to this Act was first published by the Governor of Bombay on the 28th January, 1887).

An Act to amend Bombay Act III of 1874.

Bom. III of 1874.

WHEREAS it is expedient to amend the Bombay Hereditary Offices Act, 1874, in manner hereinafter appearing; It is enacted as follows :—

Amendment of section 5.

1. For section 5 of the said Act the following section shall be substituted (namely) :—

[Printed on p. 412.]

Female members to be postponed.

2. Every female member of a watan family other than the widow of the last male owner, and every person claiming through a female, shall be postponed in the order of succession to any watan, or part thereof, or interest therein, devolving by inheritance after the date when this Act comes into force to every male member of the family qualified to inherit such watan, or part thereof, or interest therein.

Widow's interest.

The interest of a widow in any watan or part thereof shall be for the term of her life or until her marriage only.

Amendment of section 10.

3. In section 10 of the said Act the words "or may pass" shall be inserted after the word "or have so passed."

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING ·
CENTRAL LIBRARY

4. [*Repeal of portion of section 11*]. *Repealed by Act XVI of 1895.*

5. After section 11 of the said Act the following section shall be inserted, namely :— New section added after section 11.

[Printed on p. 417].

6. In section 30 of the said Act the word "officiators" shall be substituted for the word "sharers." Amendment of section 30.

7. In section 35 of the said Act the words "notice or" shall be inserted after the word "which." Amendment of section 35.

8. For section 38 of the said Act the following section shall be substituted (namely) :— Amendment of section 38.

[Printed on p. 427.]

9. For section 45 of the said Act the following section shall be substituted (namely) :— Amendment of section 45.

[Printed on p. 430].

10. For section 46 of the said Act the following shall be substituted (namely) :— New section substituted for section 46.

[Printed on p. 431.]

11. In section 50 of the said Act, the word "general" shall be substituted for the word "known." Amendment of section 50.

12. For section 53 of the said Act the following section shall be substituted (namely) :— New section substituted for section 53.

[Printed on p. 433.]

13. For section 60 of the same Act the following section shall be substituted (namely) :— New section substituted for section 60.

[Printed on p. 435.]

14. For section 70 of the said Act

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

New section substituted for section 70.

the following section shall be substituted (namely) :—

[Printed on p. 440].

Amendment of section 84.

15. (*1*) In section 84 of the said Act the following words shall be inserted after the word "purpose," *viz.*—

[Printed on p. 445].

(*2*) And the following paragraph shall be added to the said section, *viz.*—

[Printed on p. 445.]

Addition of a new schedule.

16. The following schedule shall be added to the said Act (namely) :—(not printed.)

MADRAS REGULATION XXV OF 1802.

[THE MADRAS PERMANENT SETTLEMENT REGULATION, 1802].

[13th July, 1802.]

A Regulation for declaring the proprietary right of lands to be vested in individual persons, and for defining the rights of such persons, under a permanent Assessment of the Land-revenue in the British territories subject to the Presidency of Fort St. George.

WHEREAS it is known to the zamindars, mirasidars, raiyats and cultivators of land in the territories subject to the Government of Fort St. George, that from the earliest until the present period of time the public assessment

CENTRAL LIBRARY

of the land-revenue has never been fixed; but that, according to the practice of Asiatic Governments, the assessment of the land-revenue has fluctuated without any fixed principles for the determination of the amount, and without any security to the zamindars or other persons for the continuance of a moderate land-tax; that, on the contrary, frequent inquiries have been instituted by the ruling Power, whether Hindu or Muhammadan, for the purpose of augmenting the assessment of the land-revenue; that it has been customary to regulate such augmentations by the inquiries and opinions of the local officers appointed by the ruling Power for the time being; and that in the attainment of an increased revenue on such foundations, it has been usual for the Government to deprive the zamindars, and to appoint persons on its own behalf to the management of the zamindaris, thereby reserving to the ruling Power the implied right and the actual exercise of the proprietary possession of all lands whatever; and whereas it is obvious to the said zamindars mirasidars, raiyats and cultivators of land that such a mode of administration must be injurious to the permanent prosperity of the country by obstructing the progress of agriculture, population and wealth, and destructive of the comfort of individual persons by diminishing the security of personal freedom and

CENTRAL LIBRARY

of private property; wherefore, the British Government, impressed with a deep sense of the injuries arising to the State and to its subjects from the operation of such principles, has resolved to remove from its administration so fruitful a source of uncertainty and disquietude, to grant to zamindars and other landholders, their heirs and successors, a permanent property in their land in all time to come, and to fix for ever a moderate assessment of public revenue on such lands, the amount of which shall never be liable to be increased under any circumstances.

Assessment on all lands liable to revenue Proprietary right vested in zamindars.

2. In conformity to these principles, an assessment shall be fixed on all lands liable to pay revenue to the Government; and, in consequence of such assessment, the proprietary right of the soil shall become vested in the zamindars or other proprietors of land, and in their heirs and lawful successors for ever.

Instruments to be granted to zamindars. Corresponding Kabuliyats.

3. Where the conditions of the permanent assessment of the revenue may have been adjusted, a sanad-i-milkiyat-i-istimrar, or deed of permanent property, shall be granted on the part of the British Government to all persons being, or constituted to be zamindars or proprietors of land; and each zamindar or proprietor of land shall execute and deliver to the Collector of the district a corresponding kabuliyat.

The said sanad and kabuliyat shall contain

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the conditions and articles of tenure by which the lands shall be held.

Cases of disputed assessment.

In all cases of disputed assessment reference shall be had to the sanads and kabuliyats, and judgment shall be given by the Courts of Judicature in conformity to the conditions under which the agreement may have been formed in each particular case.

Articles of revenue which Government reserves right of abolishing or continuing Land-tax to be permanently fixed exclusive of these articles.

4. The Government having reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or permanently, the articles of revenue included, according to the custom and practice of the country, under the several heads of salt and saltpetre—of the sayar, or duties by sea or land—of the abkari, or tax on the sale of spirituous liquors and intoxicating drugs—of the excise on articles of consumption—of all taxes personal and professional, as well as those derived from markets, fairs or bazars—of lakhiraj lands (or lands exempt from the payment of public revenue), and of all other lands paying only favourable quit-rents—the permanent assessment of the land-tax shall be made exclusively of the said articles now recited.

Police expenses to be borne by Government. Lands appropriated to this purpose to be resumed.

5. The Government having charged itself generally with the maintenance and support of such establishments as may be requisite in the several provinces, cities and towns for the better keeping of the police, no lands shall be

CENTRAL LIBRARY

considered, as heretofore, to be holden on the condition of performing police duties, unless the same shall be specially provided for in the sanad-i-milkiyat-i-istimrar: and all lands or rasms heretofore appointed to the support of police establishments shall be disposed of in such manner as the Government may think fit.

Amount of assessment to be regularly paid. No remission of revenue to be allowed. Landholder's property answerable for consequences of failure.

6. The landholders shall regularly pay in all seasons, in the current coin of their respective provinces, the amount of the permanent assessment fixed on their lands; the remission of revenue which has occasionally been granted according to the custom of the country on account of drought, inundation or other calamity of the season shall cease and never be revived; and where landholders may fail to discharge their pecuniary engagements their property shall be answerable for the consequence of such failure.

Their personal property to be attached in the first instance.

7. Where such failure may occur, the personal property of landholders shall in the first instance be attached, and ultimately their lands shall be liable to be sold and transferred from them for ever, if necessary, for the payment of the public revenue.

Proprietors of land may transfer proprietary right in whole or part of their zamindaris.

8. Proprietors of land shall be at free liberty to transfer without the previous consent of the Government, or of any other authority, to whomever they may think proper, by sale, gift or otherwise, their proprietary right the whole or in any part of their zamindaris; such

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

transfers of land shall be valid and shall be respected by the Courts of Judicature and by the officers of Government; provided they shall not be repugnant to the Muhammadan or to the Hindu laws, or to the regulations of the British Government. But unless such sale, gift or transfer shall have been regularly registered at the office of the Collector, and unless the public assessment shall have been previously determined and fixed on such separated portions of land by the Collector, such sale, gift or transfer shall be of no legal force or effect, nor shall such transaction exempt a zamindar from the payment of any part of the public land-tax assessed on the entire zamindari previously to such transfer, but the whole zamindari shall continue to be answerable for the total land-tax, in the same manner as if no such transaction had occurred.

Restrictions under which such transfer is to be made.

9. Where a part of a zamindari may be sold for the liquidation of arrear of the public assessment, or for the satisfaction of a decree of a Court of Judicature, or where part of a zamindari may be transferred by sale, gift or otherwise, the zamindar or landholder shall furnish to the Collector true and correct accounts of the entire zamindari, and of the portion of the zamindari about to be separated, for a period of time not less than the three years preceding such sale or transfer, in order that the due proportion of the public revenue may be fixed thereon.

Accounts to be furnished in forming part of zamindari into separate estate.

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Principle regulating assessment on part to be separated.

The assessment to be fixed in this case on the separated lands shall always bear the same proportion to the actual value of the separated portion as the total permanent jama on the zamindari bears to the actual value of the whole zamindari.

10. *[No separate estate to be created with a less jama than 500 pagodas]. Rep., Mad. Act II of 1869.*

Number of karnams to be kept up to be appointed by zamindars.

11. The zamindars or landholders shall support the regular and established number of karnams in the several villages of their respective zamindaris.

The karnams shall be appointed from time to time by the zamindars, and shall obey all legal orders issued by them; but the karnams shall not be liable to be removed from their offices, except by the sentence of a Court of Judicature.

Procedure against karnams in cases of complaint.

Where a zamindar, or his under-farmers, tenants or raiyats, may have cause of complaint against a karnam for breach of his duty, such zamindar shall be free to institute a suit in the Adalat of the zila for the purpose of bringing such karnam to trial and punishment; but, where a zamindar may deprive a karnam of his office without such previous regular process, the zamindar shall be liable to make such satisfaction for the injury as the Adalat of the zila may decree.

Where a karnam may be dismissed from

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

his office by the sentence of a Court of Judicature, the zamindar shall in the first instance select a successor from the family of the last incumbent, provided any member of that family be found capable of performing the duty of karnam; but where no member of the family may be capable of discharging the duty of karnam, in that case the zamindar shall exercise his discretion in the appointment of a proper person. The name of the person appointed to succeed to the office of karnam shall be reported to the collector of the zila by the zamindar.

Appointment of successor to karnam dismissed from office.

12. It shall not be competent to proprietors of land to appropriate any part of a landed estate permanently assessed, to religious or charitable or to any other purposes by which it may be intended to exempt such lands from bearing their portion of the public tax; nor shall it be competent to a proprietor of land to resume lands, or to fix a new assessment on lands which may be allotted (at the time when such proprietor may become possessed of the estate in which lands are situated) to religious or to charitable purposes under the denominations of Devasthan or Devadayam, of Brahmadayam or Agraharam, of Yaumia, Jivadan or Madad Ma'ash, of Piran, Fakiran, or any other description of exempted lands described under the general term of lakhiraj unless the consent of the Government shall have been previously obtained for that purpose.

No part of an estate permanently assessed can be exempted from bearing its portion of public tax. Lands allotted to religious purposes.

13. Where the consent of the Government

CENTRAL LIBRARY

Where consent is obtained, assessment on such lands to be paid as fixed by Collector.

may have been obtained to a particular appropriation of the lands above described, the proprietor of the estate in which such lands are situated shall pay such assessment of revenue as may be fixed on the said lands by the Collector of the zila.

Zamindars to engage with raiyats, to grant pattas, and to give receipts for rents.

14. Zamindars or landholders shall enter into engagements with their raiyats for a rent, either in money or in kind, and shall, within a reasonable period of time, grant to each raiyat a patta or kaul, defining the amount to be paid by him, and explaining every condition of the engagement. And the said zamindars or landholders shall grant regular receipts to the raiyats for discharges in money or in kind made by the raiyats on account of the zamindars.

Zamindars refusing to give pattas or receipts, liable to be sued.

Where a zamindar after the expiration of a reasonable period of time from the execution of his kabuliyat may neglect or refuse to comply with the demand of his under-farmers or raiyats for the pattas or receipts above mentioned, such zamindar shall be liable to be sued in the Adalat of the zila, and shall pay such damages as may be decreed by the Adalat to the complainant.

Zamindars to assist in keeping the peace.

15. Zamindars shall aid and assist the officers of Government in apprehending and securing offenders of all descriptions, and they shall inquire and give notice to the Magistrates of robbers or other disturbers of the public peace who may be found, or who may seek refuge, in their zamindaris.

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Madras Act No. II of 1904.

THE MADRAS IMPARTIBLE ESTATES ACT.

(Received the assent of the Governor on the 8th February 1904, and that of the Governor-General on the 1st March 1904.)

An Act to declare that certain estates are impartible and that the proprietors of such estates cannot exercise unrestricted powers of alienation in respect thereof.

Preamble.

Whereas it is expedient to amend the law in regard to the impartibility and inalienability of certain estates; It is hereby enacted as follows:—

Short title.

1. (1) This Act may be called the Madras Impartible Estates Act, 1904.

Extent.

(2) It extends to the whole of the Presidency of Madras except the districts of Malabar and South Canara.

Repeal.

(3) On this Act coming into force the Madras Impartible Estates Act, 1902, and the Madras Impartible Estates Act Continuance Act, 1903, shall be repealed.

Definitions.

2. In this Act unless there is something repugnant in the subject or context:

"Alienation."

(1) "Alienation" includes a temporary transfer such as a mortgage or a lease:

"Impartible estate."

(2) "Impartible estate" means an estate descendible to a single heir and subject to the

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CENTRAL LIBRARY

other incidents of impartible estates in Southern India.

"Proprietor of an impartible estate."

(3) "Proprietor of an impartible estate" means the person entitled to possession thereof as single heir under the special custom of the family or locality in which the estate is situated, or if there be no such family or local custom under the general custom regulating the succession to impartible estates in Southern India.

Estates deemed impartible.

3. The estates included in the schedule shall be deemed to be impartible estates.

Restrictions on alienations of impartible estates.

4. (1) The proprietor of an impartible estate shall be incapable of alienating or binding by his debts, such estate or any part thereof beyond his own lifetime unless the alienation shall be made, or the debt incurred, under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather of the other co-parceners, to make an alienation of the joint property, or incur a debt, binding on the shares of the other co-parceners independently of their consent.

Permissible alienations.

(2) In particular and without prejudice to the generality of the foregoing provisions, the proprietor of an impartible estate is hereby expressly authorised—

(*a*) to grant sites for public charitable and public religious institutions:

(*b*) to grant mining or quarrying leases for terms not exceeding sixty years

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

and leases of the pannai or home farm lands for terms not exceeding fifteen years, provided that every such lease—

(*i*) shall be by registered deed and shall be made to take effect in possession not later than twelve months after its date ;

(*ii*) shall reserve the best rent that can reasonably be obtained, regard being had to any money laid out or to be laid out by the lessee for the benefit of the estate, but not to any fine or premium paid or to be paid in consideration of granting such lease ;

(*iii*) shall contain a covenant by the lessee for payment of rent and a condition of re-entry on the rent not being paid within a time therein specified not exceeding three months ;

(*iv*) if a mining or quarrying lease, may make the rent ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of in or from such estate, or any other land, or by or according to any facilities given in that behalf, and may reserve a fixed or minimum rent with or without power for the

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

lessee, in case the rent according to acreage or quantity in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

Exception.

(3) Nothing in this section shall be construed to restrict the power of the owner of an impartible estate to provide for the succession thereto in default of heirs.

Procedure in regard to grant of certain leases.

5. When the proprietor of an impartible estate proposes to grant any such lease as specified in section 4, sub-section (2), clause (*b*), it shall be lawful for such proprietor or the intending lessee to submit a draft of the proposed lease to the Board of Revenue for approval, and the Board, if satisfied after making such inquiry and giving such notices as it thinks fit, that the terms of such draft lease are in accordance with the provisions of this Act, may approve thereof and affix its seal thereto in token of approval ; and if the proprietor shall thereafter execute the lease in the terms of the draft lease so approved and sealed, such lease shall be deemed to have been duly granted in accordance with the provisions of this Act.

Conditions of alienations of impartible estates for payment of land revenue due to Government.

6 Notwithstanding anything hereinbefore contained, the proprietor of an impartible estate shall be incapable of alienating, or binding by his debts, such estate or any part

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

thereof beyond his own lifetime for the payment of land revenue due to Government, unless he shall have first obtained the consent in writing of the Collector of the district in which the estate is situated. Such consent shall not be refused unless in the opinion of the Collector the case is one in which the land revenue due to Government may be realised by management of the estate under the provisions of the Madras Revenue Recovery Act, 1864.

Saving Clause.

7. This Act shall not affect alienations made or debts incurred before the coming into force of this Act and shall cease to apply to estates or parts of estates which may hereafter be lawfully alienated otherwise than by temporary transfer.

Computation of period of limitation.

8. (1) In computing the period of limitation applicable to suits and legal proceedings other than suits stayed and to appeals barred by the Madras Impartible Estates Act, 1902, the period during which such suits, proceedings or appeals were stayed or barred by the said Act shall be excluded, and all such suits, proceedings and appeals shall be deemed to have been actively prosecuted during such period within the meaning of section 52 of the Transfer of Property Act, 1882.

Exclusion of estate declared partible.

(2) If in any suit, proceeding or appeal permitted to proceed by the Madras Impartible Estates Act Continuance Act, 1903, it be finally decided that any estate named in the schedule attached to this Act is partible, such

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

estate shall be deemed not to have been mentioned in the schedule.

SCHEDULE.

North Arcot.

1. Kalahasti.
2. Karvetnagar.
3. Punganuru.
4. Kangundi.
5. Bangari Palaiyam.
6. Naraganti Palaiyam.
7. Vallivedu and Kamavaram Divisions of Pulicherla Palaiyam.
8. Gudipati Palaiyam.
9. Tumba Palaiyam.
10. Kalluru Palaiyam.

South Arcot.

1. Vettavelam.
2. Kurumba Gounden Jagir.
3. Jadaya Gounden Jagir.
4. Ariya Gounden Jagir.

Chingleput.

1. Kalahasti.

Coimbatore.

1. Uttukuli.
2. Samattur.
3. Kottampatti.
4. Poravipalaiyam.
5. Ramapatnam.
6. Metratti.
7. Tungavi.
8. Jottampatti.
9. Veddapatti.

Ganjam.

1. Parlakimedi.
2. Dharakota.
3. Kallikota.
4. Pedda Kimedi.
5. Chikatti.
6. Mandasa.
7. Chinna Kimedi.
8. Serugada.
9. Humma.
10. Bodogada.
11. Surangi.
12. Jarada.
13. Budarasingi.
14. Tarla.
15. Biridi.
16. Palaru.

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Godavari.

1. Pithapuram.
2. Nidadavolu, Baharzhalli and Ambarapeta.
3. Vegayammapeta.
4. Tangellamudi.
5. Bhadrachalam.
6. Kotipalli in the Vizianâgram zamindari.
7. Telikaicherla.
8. Vilass.
9. Janupalle.
10. Jalimmdi.

Kistna.

1. Devarakota.
2. Munagala Paragana.
3. Chintalapati Vantu.

Madura.

1. Ramnad.
2. Sivaganga.
3. Rettayambadi.
4. Peraiyur.
5. Saptur.
6. Bodinayakkanur.
7. Gandamanayakkanur.
8. Ayakkudi.
9. Indaiyangottai.
10. Ammayanayakkanur.
11. Puliyankulam.
12. Jyotilanayakkanur.
13. Uttappanayakkanur.
14. Doddappanayakkanur.
15. Nadukkottai.
16. Melakkottai.
17. Sandaiyur.
18. Tevaram.
19. Erasakkanayykkanur.
20. Mambarai.

Nellore.

1. Venkatagiri.
2. Chundi.
3. Mutyalapadu.
4. Kalahasti.

Salem.

1. Shulagiri Palaiyappattu.
2. Ankusagiri Palaiyappattu.
3. Periya Kalrayan Nad.
4. Chinna Kalrayan Nad.
5. Ariya Gounden Jagir.

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Tanjore.

1. Gandarvakkottai.
2. Kallakottai.
3. Konur.
4. Sillattur.
5. Palayavanam.
6. Pappanadu.
7. Singavanam.
8. Madukkur.
9. Neduvasal.
10. Sendangudi.
11. Attivetti.

Tinnevelly.

1. Ettiyapuram.
2. Sivagiri.
3. Settur.
4. Urkkadu.
5. Singampatti.
6. Uttumalai.
7. Maniyachi.
8. Kadambur.
9. Attankarai.
10. Naduvak-kurichchi Minor Division.
11. Talaivankottai.
12. Alagapuri.
13. Mannarkottai.
14. Sennalkudi and Kadamban-kulum.
15. Kollapatti.
16. Kollankondan.
17. Avudaiyapuram.

Trichinopoly.

1. Marungapuri.
2. Kadavur.
3. Turaiyur.
4. Udaiyarpalaiyam

Vizagapatam.

1. Vizianagram.
2. Bobbili.
3. Saluru.
4. Madugula.
5. Jeypore.
6. Kurupam.
7. Sangamvalasa.
8. Kasipuram.
9. Pachipenta.
10. Andra.
11. Saripalli Bhima-varam.

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MADRAS ACT No. III OF 1895.

[THE MADRAS HEREDITARY VILLAGE OFFICES ACT, 1895.]

[*8th April, 1895*; *1st July, 1895.*].

An Act to repeal Madras Regulation VI of 1831, and for other purposes.

Preamble.

Whereas it is expedient to provide more precisely for the succession to certain hereditary village-offices in the Presidency of Madras; for the hearing and disposal of claims to such offices or the emoluments annexed thereto; for the appointment of persons to hold such offices and the control of the holders thereof, and for certain other purposes; It is hereby enacted as follows:—

Title, commencement and extent.

1. (1) This Act may be called the Madras Hereditary Village-Offices Act, 1895; and it shall come into force from such date as may be notified by Government.

(2) Section 5 applies to the whole of the Presidency of Madras; the rest of the Act applies to the whole of the said Presidency except the scheduled districts as defined in the Scheduled Districts Act, 1874.

Repeal.

2. (1) * * * * * * On and after the commencement of this Act, no portion of Madras Regulation XXIX of 1802 shall continue to apply to any local area which is not a permanently-settled proprietary estate.

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Amendment of Act XXIV of 1859.

(2) From the preamble of Act XXIV of 1859 (An Act for the better regulation of the Police within the territories subject to the Presidency of Fort St. George), the words "and improve the condition of the village police" shall be omitted; and, for the definition of the word "Police" in section 1 of the same Act, shall be substituted the following clause, namely :—

"The word 'Police' shall include all persons appointed under this Act."

Amendment of Madras Act II of 1894.

(3) In clause (c) of the definition of the word "Estate" in section 4 of the Madras Proprietary Estates' Village Service Act, 1894, after the word "palaiyam" shall be inserted the words "or jaghir"; and, in sub-section (1) of section 15 of the same Act between the words "among the" and the words "holders of the offices," shall be inserted the words "families of the last."

Classes of village-offices to which Act applies.

3. This Act shall apply to the following classes of village-offices, provided that emoluments have been attached thereto :—

(1) hereditary village-offices existing in ryotwari villages or inam villages which for the purpose of village administration are grouped with ryotwari villages and belonging to the following six classes, by whatever designation they may be locally known, namely :—

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(i) village munsifs,
(ii) potels, monigars and peddakapus,
(iii) karnams,
(iv) nirgantis,
(v) vettis, totis and tar dalgars,
(vi) talayaris ;

The Local Government shall have power to decide what officers come under any of the above classes.

(2) hereditary village-offices to which the Madras Proprietary Estates' Village Service Act, 1894, is extended ;

(3) other hereditary village-offices in proprietary estates except (i) the offices forming class (4) below and (ii), in proprietary estates wherein Madras Regulation XXIX of 1802 remains in force, the office of village accountant ;

(4) the hereditary offices of village artizans and village servants such as the following, namely :—
(i) the village carpenter,
(ii) the village blacksmith,
(iii) the village barbar,
(iv) the village washerman,
(v) the village potter,
(vi) the village astrologer,
(vii) the village purohit or priest.

Definitions

4. In this Act unless there is something repugnant in the subject or context,—"Emoluments" means and includes—

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(i) lands ;

(ii) assignments of revenue payable in respect of lands ;

(iii) fees in money or agricultural produce ;

(iv) money-salaries and all other kinds of remuneration ; granted or continued in respect of, or annexed to, any office by the State.

"Proprietary estate" and "Proprietor" mean, respectively, an Estate and Proprietor as defined in the Madras Proprietary Estates Village Service Act, 1894, as amended by this Act.

"Village" means any local area now recognized as a village or hereafter declared by Government to be a village.

Emoluments attached by the State to certain offices inalienable and not liable to attachment.

5. The emoluments of village-offices, whether such offices be or be not hereditary, and, in the scheduled districts as defined in the Scheduled Districts Act, 1874, all such emoluments and other emoluments granted or continued in remuneration for the performance of duties connected with the collection of the revenue or the maintenance of order, shall not be liable to be transferred or encumbered in any manner whatsoever and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof.

Villages may be grouped or divided.

6. (1) [In any local area in which this Act is in force] the Board of Revenue may, subject

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

to rules made in this behalf under section 20, group or amalgamate any two or more villages or portions thereof so as to form a single new village, or divide any village into two or more villages and, thereupon, all hereditary-village offices [of the classes defined in section 3, clause (1), of this Act] in the villages or portions of villages or village grouped, amalgamated or divided as aforesaid, shall cease to exist and new offices, which shall also be hereditary, shall be created for the new village or villages. In choosing persons to fill such new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished.

Effect of grouping and division upon village-offices.

(2) If two or more village-offices exist [in any ryotwari village or in any inam village which for the purpose of village administration is grouped with a ryotwari village] the Board of Revenue may, subject to the approval of Government, direct that the number of such village-offices shall be reduced and, thereupon, the Collector shall dispense with the services of the officers no longer required, and shall retain those whom he may consider to be best qualified to discharge the duties of the remaining offices.

Reduction of village-offices.

7.-(1) The Collector may, of his own motion or on complaint and after inquiry, fine, suspend, dismiss or remove the holder of any of the offices forming class (1) in section 3, and

Power of Collector over village-officers in Government villages and proprietary estates.

CENTRAL LIBRARY

suspend, dismiss or remove the holder of any of the offices forming class (3) in the said section, for misconduct or for neglect of duty or incapacity or for non-residence in the village or for any other sufficient cause, and shall make a record of his reasons for so doing in writing and furnish a copy of the same to the village-officer concerned :

Proviso.

Provided that when a Village Munsif who is also the head of the village is suspended or removed under the Madras Village Courts Act, 1889, such suspension or removal shall involve his suspension or removal from the office of head of the village.

Power of Tahsildar and Deputy Tahsildar over village-officers in Government villages.

(2) A Tahsildar or Deputy Tahsildar may, of his own motion or on complaint and after inquiry, fine the holder of any of the offices forming class (1) in section 3; for any of the causes specified in sub-section (1) and in such amount as the Board of Revenue may, by general or special order, prescribe. The provisions of sub-section (1) in regard to the recording of reasons and the furnishing of copies shall apply to proceedings taken under this sub-section.

Power of proprietor over village-officers in proprietory villages.

8. A proprietor may, of his own motion or on complaint and after inquiry, suspend, dismiss or remove the holder of any of the offices in his estate forming class (3) in section 3, except the village accountant, the head of the village and the village watchman or police-

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

officer, for misconduct or for neglect of duty or incapacity or for non-residence in the village or for any other sufficient cause, and shall make a record of his reasons for so doing in writing and furnish a copy of the same to the village officer concerned.

Limitation of power of Collector over certain officers in proprietary estates.

9. The powers conferred on a Collector by sub-section (1) of section 7 over the holders of the village offices forming class (3) in section 3, except the offices of village accountant, head of the village and village watchman or police-officer, shall not be exercised, unless, for reasons to be recorded in writing, the Collector is satisfied that the proprietor concerned has neglected to exercise in an adequate manner the powers conferred on him by section 8.

Rules to be observed in making appointments to certain offices in Government villages.

10. When a vacancy occurs in any of the village-offices forming class (1) in section 3, the Collector shall fill up the vacancy in accordance with the provisions of the following sub-sections :—

General qualifications requisite in all cases.

(1) No person shall be eligible for appointment who—

(a) is not of the male sex ;

(b) has not attained the age of majority ;

(c) is not physically and mentally capable of discharging the duties of the office ;

(d) has not qualified according to the educational test prescribed for the office in question by the Board of

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Revenue by rules made under section 20;

(e) has been convicted by a Criminal Court of any offence which, in the opinion of the Collector, disqualifies him for holding the office.

Primogeniture to be observed.

(2) The succession shall devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible zamindaris in Southern India.

In certain cases person other than direct heir may be appointed.

(3) Where the next heir is not qualified under sub-section (1), the Collector shall appoint the person next in order of succession who is so qualified, and, in the absence of any such person in the line of succession, may appoint any person duly qualified under sub-section (1).

Temporary disqualification of heir in certain cases.

(4) Where an office has become vacant by the dismissal or suspension of the last holder, the Collector may direct that, until the death or return to duty of such last holder, the duties of the office shall be performed by some person duly qualified under sub-section (1) who is not an undivided member of the family of the dismissed or suspended officer; provided that, when the officer who has been dismissed dies, or if the

CENTRAL LIBRARY

officer who has been suspended dies while under suspension, the vacancy caused by such death shall be filled up in accordance with the provisions of sub-sections (2) and (3).

Procedure to be adopted where heir is a minor.

(5) When the person who would otherwise be entitled to succeed to an office is a minor, the Collector shall register the minor as the heir of the last holder and appoint some other person qualified under sub-section (1) to discharge the duties of the office until the person registered as heir, on attaining majority or within three years thereafter, is qualified under sub-section (1) to discharge the duties of the office himself, when he shall be appointed thereto. If the person registered as heir under sub-section dies or if he remains disqualified under sub-section (1) for three years after attaining majority, the Collector shall fill up the vacancy as provided in sub-sections (2) and (3).

Method of filling up vacancy caused by resignation, dismissal, removal or suspension.

(6) If a vacancy is caused by the resignation, dismissal, removal or suspension of the holder of an office, and the Collector does not give the direction referred to in sub-section (4), he shall fill up the vacancy in accordance with the provisions of this section

CENTRAL LIBRARY

as if it had been caused by the death of the said holder; provided that, upon the expiry of the period of suspension of an officer who has been suspended, or if, for any reason, an officer who has been dismissed, removed or suspended is permitted to resume the office from which he has been dismissed, removed or suspended, the person appointed to fill the vacancy caused by the said suspension, dismissal or removal shall cease to hold office.

Rules to be observed in making appointments to certain offices in proprietary estates.

11. When a vacancy occurs in a proprietary estate in any of the offices forming class (3) in section 3, the proprietor shall fill up the vacancy in accordance with the provisions of the following sub-sections:—

General qualifications requisite in all cases.

(1) No person shall be eligible for appointment who—

(a) is not of the male sex;

(b) has not attained the age of majority;

(c) is not physically and mentally capable of discharging the duties of the office.

Law or custom of succession to be observed.

(2) The succession shall devolve in accordance with the law or custom applicable to the office in question at the date on which this Act comes into force.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

(3) Where the next heir is not qualified under sub-section (1), the proprietor shall appoint the person next in order of succession who is so qualified, and, in the absence of any such person in the line of succession, may appoint any person duly qualified under subsection (1).

In certain cases person other than direct heir may be appointed.

(4) When the person who would otherwise be entitled to succeed to an office is a minor, the proprietor shall register the minor as the heir of the last holder and appoint some other person qualified under sub-section (1) to perform the duties of the office until the person registered as heir is qualified under sub-section (1) to discharge the duties of the office himself, when he shall be appointed thereto. If the person registered as heir under this sub-section dies, or if, on attaining majority, he proves to be disqualified under clause (c) of sub-section (1), the proprietor shall fill up the vacancy as provided in sub-sections (2) and (3).

Procedure to be adopted where heir is a minor.

12. The succession to village-offices forming class (4) in section 3 shall devolve in accordance with the law or custom applicable thereto at the date on which this Act comes into force.

In case of village artizans, law or custom of succession to be observed.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Provisions relating to suits for offices for recovery of emoluments and for registry as heir.

13. (1) any person may sue before the Collector for any of the village-offices specified in section 3 or for recovery of the emoluments of any such office, on the ground that he is entitled under sub-section (2) or (3) of section 10 of the Madras Proprietary Estates' Village Service Act, 1894, or under sub-section (2) or (3) of section 10 or sub-section (2) or (3) of section 11 or section 12 of this Act, as the case may be, to hold such office and enjoy such emoluments; or, being a minor, may sue before the Collector to be registered as heir of the last holder of any such office.

Provisos :—

No suit for declaratory decree.

(i) No suit shall be entertained for a mere declaratory decree.

Procedure in case of dispute as to nature of emoluments.

(ii) When one of the facts in issue in a suit is whether the emoluments of the office consist of land or of an assignment of revenue payable in respect of land, the Collector shall decide the claim on the assumption that only the said assignment constitutes the emoluments; but such decision shall not bar the right of the claimant to institute a suit in a Civil Court for recovery of the land itself.

Rejection of plaint when claimants is ineligible for appointment.

(2) If at any time befor the completion of the trial of a suit preferred under this section for any office or for the recovery of the emolu-

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

ments of any office, it appears to the Collector that the claimant is not eligible for appointment under sub-section (1) of section 10 of the Madras Proprietary Estates' Village Service Act, 1894, or under sub-section (1) of section 10 or sub-section (1) of section 11 of this Act, as the case may be, he shall pass an order rejecting the plaint.

Limitation of time within which suits may be brought.

14. (1) No suit preferred before a Collector under the last preceding section shall be entertained which is not preferred within three years from the date of the cause of action arising, whether such date be before or after the commencement of this Act:

Limitation in case of minority.

Provided that, in the case of a person who, by reason of minority, was disqualified for holding office, the right to sue for such office or for the recovery of the emoluments thereof shall accrue from the date of his attaining majority.

Limitation of time within which execution of decree or order may be applied for.

(2) No application for the execution of a decree or order passed under this Act shall be entertained, if made after the expiration of one year from the date of such decree or order.

Execution of decrees and orders passed under Regulation VI of 1831.

(3) Decrees or orders passed under Madras Regulation VI of 1831 may be executed under the provisions of this Act; provided that no application for the execution of such decree or order shall be entertained, if made either after the expiration of three years from the date of such decree or order or after the expiration of one year from the commencement of this Act.

CENTRAL LIBRARY

Limitation when appeal preferred.

(4) In cases in which the decree or order sought to be executed was appealed against, the periods of limitation prescribed in sub-sections (2) and (3) shall commence from the termination of the appeal.

Power of District Collector in regard to transfers of suits.

15. The District Collector may transfer to his own file any suit on the file of any Revenue-officer in charge of a division of the district or from the file of one such officer to that of another, or to the file of an assistant or Deputy Collector not in charge of a division for disposal.

Procedure to be observed in trying suits.

16. (1) The trial of suits under this Act shall be regulated by rules made by the Board of Revenue under section 20 and by the following provisions :—

Date of hearing to be fixed and parties to be heard.

(i) A date shall be fixed for the hearing of the suit and the same shall be notified to the parties who shall be entitled to be heard in person or by agent ;

Witnesses may be produced or summons.

(ii) The parties shall be entitled to produce witnesses and to demand that any person whose evidence they require shall be summoned as a witness or that any person shall be summoned to produce a document and the officer trying the suit shall comply with such demand, unless, for reasons to be recorded, he considers it unnecessary to do so ;

CENTRAL LIBRARY

(iii) The officer trying the suit shall record, in his own hand and in English a memorandum containing the material averments of the parties, the material portions of the evidence, his decision and the reasons therefor. Record of proceedings.

(2) Every person to whom a summons is issued under this section shall be legally bound to obey the same. Obligation to obey summons.

17. Decrees and orders passed in suits under this Act may provide for payment of costs according to such scale and subject to such rules as may be prescribed by the Board of Revenue under section 20, and shall be executed in accordance with rule to be made by the Board of Revenue under the said section. Decrees may provide for costs and shall be executed according to rules made by Board of Revenue.

18. (1) If, before or during the hearing of a suit under this Act or of an appeal against a decree or order passed in a suit under this Act, or if, in the execution of any such decree, any question of law or usage having the force of law, or of the construction of a document which construction may affect the merits, arises, and the officer trying the suit or appeal or executing the decree entertains reasonable doubt on such question, he may, either of his own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement for the In certain cases, Collector may refer question of law to Board of Revenue.

CENTRAL LIBRARY

decision of the Board of Revenue, and shall stay further proceedings until the said decision is communicated to him.

Procedure to be followed in case of such reference.

(2) The Board of Revenue shall, if any of the parties so request, hear him or his agent and shall decide the point referred and transmit a copy of its judgment to the officer by whom the reference was made, and the said officer shall, on receipt thereof, proceed to dispose of the case in conformity with the decision of the said Board, and the correctness of the decision of the said Board shall not be contested in any appeal made under this Act.

Decision of Board of Revenue not to be contested.

Disposal of suits and appeals pending at commencement of this Act.

19. All suits brought and appeals made under Madras Regulation VI 1831 shall, after the commencement of this Act, be heard and disposed of as if they had been preferred under this Act.

Board of Revenue may make rules on certain subjects.

20. The Board of Revenue may, with the approval of Government and after previous publication, make rules not inconsistent with this Act or with the Madras Proprietary Estates' Village Service Act, 1894, in regard to the following matters :—

(i) the division, grouping and amalgamation of villages ;

(ii) the holding of inquiries under sections 6, 7 and 8 and the hearing of appeals under section 23 ;

(iii) the educational qualifications required of the holders of the village-offices forming class (1) in section 3 ;

CENTRAL LIBRARY

(iv) the procedure to be followed in disposing of suits and appeals from decrees or orders passed in suits and the registers to be maintained in connection therewith ;

(v) the execution of decrees and orders passed in suits and the taxation of costs ;

(vi) the salaries and other allowances to be assigned to the holders of the village-offices forming class (1) in section 3 and the method of their payment ;

(vii) the duties of the holders of the village-offices forming classes (1) and (3) in section 3, and the descriptions and forms of the accounts and registers to be kept by them ;

(viii) the custody, production and transfer of the accounts and other records kept by the holders of the village-offices forming classes (1) and (3) in section 3 ;

(ix) the publication of administration reports under * * * the Madras Proprietary Estates' Village Service Act 1894, and this Act ;

(x) any other matters calculated to enhance the efficiency of the village service.

21. No Civil Court shall have authority to

CENTRAL LIBRARY

Jurisdiction of Civil Courts barred

take into consideration or decide any claim to succeed to any of the offices specified in section 3 or any question as to the rate or amount of the emoluments of any such office or except as provided in proviso (ii) to sub-section (1) of section 13, any claim to recover the emoluments of any such office :

Proviso empowering Civil Courts to set aside the decisions of Revenue Courts on the question of jurisdiction

Provided that, if, in any suit instituted under this Act, the defendant has pleaded before the Collector that a Revenue Court has no jurisdiction to entertain the suit, on the ground that no emoluments, as defined in this Act, appertain to the office in respect of which the suit it brought, and if, on appeal preferred from the decree in such suit, the appellate authority has decided adversely to such plea, the defendant may, within six months from the date of the appellate decree institute a suit in a Civil Court to set aside such appellate decree on the said ground and on that ground only.

Nothing in this Act to prevent recovery of emoluments as arrears of revenue or to affect office which is not now hereditary.

22. Nothing herein contained shall affect the provisions of section 52 of Madras Act II of 1864 or the provisions of Madras Act IV of 1866 or, except as provided in sub-section (1) of section 6, shall be deemed to create or confer an hereditary right to any village-office.

Appeal against order or decree of Collector.

23. (1) From every order passed by a Collector under section 6 or 7, and from every decree or order passed by a Collector in a suit preferred under section 13, an appeal shall lie, within one month, to the District Collector, or,

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

if the said order or decree was passed by the District Collector, and appeal shall lie, within three months, to the Board of Revenue. The decision, on appeal, of the District Collector or the Board of Revenue, as the case may be, shall be final:

Second appeal in certain cases.

Provided that, in respect of the offices of head of the village and village accountant, a second appeal shall lie, within three months, to the Board of Revenue, against the decision on appeal of the District Collector in suits preferred under section 13 and in cases of dismissal of a village-officer under section 7.

Appeals against order of Tahsildar, Deputy Tahsildar or proprietor.

(2) From every order passed by a Tahsildar or Deputy Tahsildar under sub-section (2) of section 7, and from every order passed by a proprietor under section 8, an appeal shall lie, within one month, to the Collector whose decision shall be final.

23-A. Notwithstanding anything contained in any Regulation or Act to the contrary, no appeal shall lie after the commencement of this Act from any decree or order passed in any suit brought or appeal made under Madras Regulation VI of 1831 unless such appeal would lie under section 23 had the decree or order sought to be appealed against been passed in a suit, appeal or proceeding commenced under this Act.

24. If the officer to whom an appeal is presented under this Act in the capacity of

CENTRAL LIBRARY

Disposal of appeal by officer who passed original order.

District Collector or Collector happens to be the officer who passed the decision which is appealed against in another capacity, he shall report the fact to the Board of Revenue or to the District Collector, as the case may be, and the appeal shall be disposed of by the said Board or District Collector, and the order passed on appeal shall be final.

Certain provisions of Limitation Act to apply.

25. The provisions of sections 5 and 12 of the Indian Limitation Act, 1877, so far as they relate to suits, appeals and applications, shall *mutatis mutandis* apply to suits, appeals, or applications for the execution of decrees or orders, instituted, preferred or made under this Act.

Power of Government to place village watchman under police authorities.

26. The Government may declare that the powers of punishing village officers which are vested in the Collector by this Act and by the Madras Proprietary Estates' Village Service Act, 1894, shall be exercised in any specified local area by the District Superintendent or Assistant Superintendent of Police in respect of all, or any of, the village watchmen or police officers in that local area. From every order fining, suspending, dismissing or removing a village watchman or police-officer passed by a District Superintendent or Assistant Superintendent of Police by virtue of a declaration made under this section, an appeal shall lie, within one month, to the District Magistrate, whose decision shall be final.

CENTRAL LIBRARY

MADRAS ACT No. IV OF 1862.

[THE MADRAS ENFRANCHISED INAMS ACT, 1862.]

15th May, 1862 ; 12th June 1862.

An Act to declare what shall be proof of enfranchisement of inams.

Preamble.

Whereas * * * * under the inam rules sanctioned by Government, under date the 9th August, 1859, the reversionary rights of Government are surrendered to the inamdars, in consideration of an equivalent annual quit-rent, and the inam lands are thus enfranchised, and placed in the same position as other descriptions of landed property, in regard to their future succession and transmission; It is hereby enacted as follows :—

[*Enactments not to apply to enfranchised inams.*]

Rep., Act XI of 1901.

Evidence of enfranchisement.

2. The title-deed issued by the Inam Commissioner, or an authenticated extract from the register of the Commissioner or Collector, shall be deemed sufficient proof of the enfranchisement of land previously held on inam tenure.

CENTRAL LIBRARY

ACT No. I of 1869.

Passed By The Governor General Of India In Council.

(Received the assent of the Governor General on the 12th January 1869).

An Act to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate the succession thereto.

Preamble.

Whereas, after the re-occupation of Oudh by the British Government in the year 1858, the proprietary right in divers estates in that province was, under certain conditions, conferred by the British Government upon certain Taluqdárs and others; and whereas doubts may arise as to the nature of the rights of the said Taluqdárs and other in such estates, and as to the course of succession thereto; and whereas it is expedient to prevent such doubts, and to regulate such course, and to provide for such other matters connected therewith as are hereinafter mentioned; It is hereby enacted as follows:—

I.—*Preliminary.*

Short title.

1. This Act may be cited as "The Oudh Estates' Act, 1869," and shall extend only to

Extent of Act.

the estates hereinafter referred to.

Interpreation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

CENTRAL LIBRARY

"Transfer" means an alienation *inter vivos*; "Transfer."

"Will" means the legal declaration of the intentions of the testator with respect to his property affected by this Act, which he desires to be carried into effect after his death; "Will,"

"Codicil" means an instrument made in relation to a Will, and explaining, altering, or adding to its dispositions: It is considered as forming an additional part of the Will; "Codicil."

"Signed" applies to the affixing of a mark; "Signed."

"Registered" means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh. "Registered."

"Minor" means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person; "Minor." "Minority."

"Taluqdár" means any person whose name is entered in the first of the lists mentioned in section eight; "Taluqdar."

"Grantee" means any person upon whom the proprietary right in an estate has been conferred by a special grant of the British Government, and whose name is entered in the fifth or sixth of the lists mentioned in section eight; "Grantee."

"Estate" means the taluq or immoveable property acquired or held by a Taluqdár or Grantee in the manner mentioned in section three, section four, or section five, or the immoveable property conferred by a special "Estate."

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

grant of the British Government upon a Grantee;

"Heir." "Heir" means a person who inherits property otherwise than as a widow, under the special provisions of this Act; and

"Legatee." "legatee" means a person to whom property is bequeathed under the same provisions;

Words expressing relationship. Words expressing relationship denote only legitimate relatives, but apply to children in the womb who are afterwards born alive.

II.—*Rights and liabilities of Taluqdàrs and Grantees.*

Taluqdars to have heritable and transferable rights in their estates. 3. Every Taluqdár with whom a summary settlement of the Government revenue was made between the first day of April 1858 and the tenth day of October 1859, or to whom, before the passing of this Act and subsequently to the first day of April 1858, a taluqdári sanad has been granted,

shall be deemed to have thereby acquired a permanent, heritable and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kabuliyat executed by such Taluqdár when such settlement was made,

or which may have been or may be decreed to him by the Court of an officer engaged in making the first regular settlement of the province of Oudh, such decree not having been appealed from within the time limited for

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

appealing against it, or, if appealed from, having been affirmed,

Subject to certain conditions.

subject to all the conditions affecting the Taluqdar contained in the orders passed by the Governor General of India on the tenth and nineteenth days of October 1859 and re-published in the first schedule hereto annexed, and subject also to all the conditions contained in the sanad under which the estate is held.

Rights and liabilities of persons named in second schedule.

4. Every person whose lands the proclamation issued in Oudh in the month of March 1858 by order of the Governor General of India specially exempted from confiscation, and whose names are contained in the second schedule hereto annexed, shall be deemed to possess in the lands for which such person executed a kabuliyat between the first day of April 1858 and the first day of April 1860 the same right and title which he would have possessed thereto if he had acquired the same in the manner mentioned in section three; and he shall be deemed to hold the same subject to all the conditions affecting Taluqdars which are referred to in the said section, and to be a Taluqdar for all the purposes of this Act.

Grantee's rights and liabilities.

5. Every Grantee shall possess the same rights and be subject to the same conditions in respect of the estate comprised in his grant as a Taluqdar possesses and is subject to, under section three, in respect of his estate.

CENTRAL LIBRARY

Saving of certain redemption-suits.

6. Nothing in sections three, four and five, or in the said orders, or in any sanad, shall be deemed to bar a suit for redemption,

(*a*) where the instrument of mortgage was executed on or after the thirteenth day of February 1844 and fixed no term within which the property comprised therein might be redeemed, or

(*b*) where the instrument of mortgage fixed a term within which the property comprised therein might be redeemed, and such term did not expire before the thirteenth day of February 1856.

Heirlooms.

7. If a Taluqdar or Grantee, or any heir or legatee of a Taluqdar or Grantee, desire that any elephants, jewels, arms of other articles of moveable property belonging to him shall devolve along with his estate, he shall take an inventory of such articles. Such inventory shall be signed by him and deposited in the office of the Deputy Commissioner of the District wherein such estate or the greater part thereof is situate; and thereupon such of the said articles as shall not have been transferred shall (so far as may be possible) be used and enjoyed by the person who, under or by virtue of this Act, is for the time being in actual possession or in receipt of the rents and profits of the said estate or the greater part thereof, otherwise than as mortgagee or lessee.

CENTRAL LIBRARY

III.—*Lists of Taluqdars and Grantees.*

Preparation of lists of Taluqdars and Grantees

8. Within six months after the passing of this Act, the Chief Commissioner of Oudh, subject to such instructions as he may receive from the Governor General of India in Council, shall cause to be prepared six lists, namely :—

First.—A list of all persons who are to be considered Taluqdars within the meaning of this Act ;

Second.—A list of the Taluqdars whose estates, according to the custom of the family on and before the thirteenth day of February 1856, ordinarily devolved upon a single heir ;

Third.—A list of the Taluqdars, not included in the second of such lists, to whom sanads or grants have been or may be given or made by the British Government up to the date fixed for the closing of such lists, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture ;

Fourth—A list of the Taluqdars to whom the provisions of section twenty-three are applicable ;

Fifth.—A list of the Grantees to whom sanads or grants have been or may be given or made by the British Government, up to the date fixed for the closing of such list, declaring that the succession to the estates comprised in such sanads or grant shall thereafter be regulated by the rule of primogeniture ;

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Sixth.—A list of the Grantees to whom the provision of section twenty-three are applicable.

Publication of lists.

9. When the lists mentioned in section eight shall have been approved by the Chief Commissioner of Oudh, they shall be punished in the *Gazette of India*. After such publication, the first and second of the said lists shall not, except in the manner provided by section thirty of section thirty-one, as the case may be, be liable to any alteration in respect of any names entered therein.

Supplementary list.

If, at any time after the publication of the said lists, it appears to the Governor General of India in Council that the name of any person has been wrongly omitted from or wrongly entered in any of the said lists, the said Governor General in Council may order the name to be inserted in the proper list, and such name shall be published in the *Gazette of India* in a supplementary list, and such person shall be treated in all respects as if his name had been from the first inserted in the proper list.

None but persons named in lists to be deemed Taluqdars or Grantees.

10. No person shall be considered Taluqdars or Grantees within the meaning of this Act, other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists and shall regard them as conclusive evidence that the persons named therein are such Taluqdars or Grantees.

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IV.—*Powers of Taluqdars and Grantees to transfer and bequeath.*

Taluqdars and Grantees may transfer and bequeath.

11. Subject to the provisions of this Act, and to all the conditions under which the estate was conferred by the British Government, every Taluqdar and Grantee, and every heir and legatee of a Taluqdar and Grantee, of sound mind and not a minor, shall be competent to transfer the whole or any portion of his estate, or of his right and interest therein, during his life-time, by sale, exchange, mortgage, lease or gift, and to bequeath by his will to any person the whole or any portion of such estate, right and interest.

A married woman may make a bequest under this Act of any property which she could alienate by her own act during her life.

Persons who are deaf or dumb or blind are not thereby incapaciated for making a transfer or bequest under this Act, if they are able to know what they do by it.

One who is ordinarily insane may make a transfer or bequest under this Act during an interval in which he is of sound mind.

No person can make a transfer or bequest under this Act while he is in such a state of mind, whether from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

A transfer and a will, or any part of a will, the making of which has been caused by

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fraud or coercion or by such importunity as takes away the free agency of the transferor or testator, is void.

Rule against perpetuity.

12. No transfer or bequest under this Act shall be valid whereby the vesting of the thing transferred or bequeathed may be delayed beyond the life-time of one or more persons living at the decease of the transferee or testator and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing transferred or bequeathed is to belong.

Restriction as to donees and legatees.

13. No Taluqdar or Grantee, and no heir or legatee of a Taluqdar or Grantee, shall have power to give or bequeath his estate, or any portion thereof, or any interest therein, to any person not being either—

(1)—a persons who, under the provisions of this Act, or under the ordinary law to which persons of the donor's or testator's tribe and religion are subject, would have succeeded to such estate or to a portion thereof, or to an interest therein, if such Taluqdar or Grantee, heir or legatee, had died intestate, or

(2)—a younger son of the Taluqdar or Grantee, heir or legatee, in case the name of such Taluqdar or Grantee, appears in the third or the fifth of the lists mentioned in section eight,

except by an instrument of gift or a will

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executed and attested, not less than three months before the death of the donor or testator, in manner herein provided in the case of a gift or will, as the case may be, and registered within one month from the date of its execution.

V.—*Transfers and Bequests.*

Transfers and bequests to Taluqdars or heirs.

14. If any Taluqdar or Grantee shall heretofore have transferred or bequeathed, or if any Taluqdar or Grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another Taluqdar or Grantee, or to such younger son as is referred to in section thirteen, clause two, or to a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferor or testator.

Transfers and bequests to persons out of line of succession.

15. If any Taluqdar or Grantee shall heretofore have transferred or bequeathed, or if any Taluqdar or Grantee or his heir or legatee shall hereafter transfer or bequeath to any person not being a Taluqdar or Grantee the

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whole or any portion of his estate, and such person would not have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property if the transferee or legatee had bought the same from a person not being a Taluqdar or Grantee.

Transfers to be in writing, signed and attested.

16. No transfer of any estate, or of any portion thereof, or of any interest therein, made by a Taluqdar or Grantee or by his heir or legatee under the provisions of this Act, shall be valid unless made by an instrument in writing signed by the transferor and attested by two or more witnesses.

Further requisites to validity of gifts *inter vivos*.

17. If any such transfer be made by gift, the gift shall not be valid unless, within six months after the execution of the instrument of gift, the gift be followed by delivery by the donor, or his representative in interest, of possession of the property comprised therein, nor unless the instrument shall have been registered within one month from the date of its execution.

Gifts to religious or charitable uses.

18. No Taluqdar or Grantee, and no heir or legatee of a Talukdar or Grantee shall have power to give his estate, or any portion thereof

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or interest therein, to religious or charitable uses; except by an instrument of gift executed not less than three months before his death, and subject to the provisions contained in section seventeen.

VI.—*Testamentary Succession.*

Section of succession Act applied to wills of Taluqdars.

19. Sections 49, 50, 51, 54, 55, and 57 to 77 (both inclusive), and sections 82, 83, 85 and 88 to 98 (both inclusive) of the Indian Succession Act (No. X of 1865), shall apply to all wills and codicils made by any Taluqdar or Grantee, or by his heir or legatee, under the provisions of this Act, for the purpose of bequeathing to any person his estate, or any portion thereof, or any interest therein: Provided that marriage shall not revoke any such will or codicil: Provided also that nothing herein contained shall affect wills made before the passing of this Act.

In applying the said sections to wills and codicils made under this Act, all words hereinbefore defined, and occurring in such sections, shall (unless there be something repugnant in the subject or context) be deemed to have the same meaning as this Act has attached to such words respectively.

Bequests to religious and charitable uses.

20. No Taluqdar or Grantee, and no heir or legatee of a Taluqdar or Grantee, having a child, parent, brother, unmarried sister, or a nephew, being the naturally born son of a

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brother of such Taluqdar or Grantee, heir or legatee, shall have power to bequeath his estate or any part thereof or any interest therein exceeding in amount or value the sum of two thousand rupees to religious or charitable uses, except by a will executed not less than three months before his death, and registered within one month from the date of its execution.

VII.—*Intestate Succession.*

'Son,' 'descendants,' 'daughter,' 'brother,' 'widow,' defined.

21. In the next following section, unless where there is something repugnant in the context, the words 'son,' 'descendants,' 'daughter' and 'brother' apply only to *Najib-ul-tarfain*, and the word 'widow' applies only to a woman belonging to the *alh-i-bradari* of her deceased husband.

Special rules of succession to intestate Taluqdars and Grantees.

22. If any Taluqdar or Grantee whose name shall be inserted in the second, third, or fifth of the lists mentioned in section eight, or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows, *viz*:—

(1)—To the eldest son of such Taluqdar or Grantee, heir or legatee, and male lineal desendants, subject to the same conditions and in the same manner as the estate was held by the deceased;

(2)—Or if such eldest son of such Taluqdar or Grantee, heir or legatee, shall have died in his life-time, leaving male lineal descendants,

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then to the eldest and every other son of such eldest son successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

(3)—Or if such eldest son of such Taluqdar or Grantee, heir or legatee, shall have died in his father's life-time without leaving male lineal descendants, then to the second and every other son of the said Taluqdar or Grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal doscendants, subject as aforesaid ;

(4)—Or in default of such son or descendants, then to such son (if any) of a daughter of such Taluqdar or Grantee, heir or legatee, as has been treated by him in all respects as his own son, and to the male lineal descendants of such son, subject as aforesaid ;

(5)—Or in default of such son or descendants, then to such person as the said Taluqdar or Grantee, heir or legatee, shall have adopted by a writing executed and attested in manner required in case of a will and registered, subject as aforesaid ;

(6)—Or in default of such adopted son, then to the eldest and every other brother of such Taluqdar or Grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

(7)—Or in default of any such brother,

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then to the widow of the deceased Taluqdar or Grantee, heir or legatee; or, if there be more widows than one, to the widow first married to such Taluqdar or Grantee, heir or legatee, for her life-time only;

(8)—And upon the death of such widow, then to such son as the said widow shall, with the consent in writing of her deceased husband, have adopted by a writing executed and attested in manner required in case of a will and registered, subject as aforesaid;

(9)—Or on the death of such first married widow and in default of a son adopted by her with such consent and in such manner as aforesaid, then to the other widows, if any, of such Taluqdar or Grantee, heir or legatee, next in order of marriage, for her life, and on the death of such other widow, to a son adopted by her with such consent and in such manner as aforesaid; or in default of such adopted son, then to the other surviving widows according to their respective seniorities as widows, for their respective lives, and on their respective deaths, to the sons so adopted by them respectively, and to the male lineal descendants of such sons respectively, subject as aforesaid;

(10)—Or in default of any such widow or of any son so adopted by her, or of any such descendant, then to the male lineal descendants, not being *najib-ul-tarfain*, of such Taluqdar or Grantee, heir or legatee, succes-

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sively, according to their respective seniorities and their respective male lineal descendants, whether *najib-ul-tarfain* or not;

(11)—Or in default of any such descendant, then to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such Taluqdar or Grantee, heir or legatee, are subject.

Nothing contained in the former part of this section shall be construed to limit the power of alienation conferred by section eleven.

General rule of succession to intestate Taluqdars and Grantees.

23. Except in the cases provided for by section twenty-two, the succession to all property left by Taluqdars and Grantees, and their heirs and legatees, dying intestate, shall be regulated by the ordinary law to which members of the intestate's tribe and religion are subject.

VIII.—*Maintenance.*

Maintenance of surviving relatives of Taluqdars and Grantees.

24. When any Taluqdar or Grantee, or his heir or legatee, dies leaving him surviving such relatives as are hereinafter mentioned, the person for the time being in the possession of his estate or the rents and profits thereof shall be liable to pay to each of such relatives during his or her life, or for such other period as is hereinafter mentioned, by twelve equal monthly payments, annuity in accordance with the custom of the country not exceeding such amount as is hereinafter mentioned: Provided

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that such relative was at the date of the death of the deceased living together with him: Provided also that such relative is and continues to be without any other adequate means of maintenance.

If any part of such estate shall have been transferred or bequeathed by the deceased, the person for the time being in possession of such part, or of the rents and profits thereof, shall be liable to pay proportionate parts of the said annuities during the continuance thereof respectively.

Grandparents, parents, and senior widows.

25. In the case of the grandparents, parents, and senior widows of the deceased, the maximum amount of the annuity shall be as follows:—

(*a*) where the annual revenue payable to Government in respect of the estate is or exceeds 1,50,000 rupees——a sum not exceeding 6,000 rupees:

(*b*) where such revenue is or exceeds 100,000 rupees, but is less than 1,50,000 rupees ——a sum not exceeding 2,400 rupees:

(*c*) where such revenue is or exceeds 50,000 rupees, but is less than 100,000 rupees——a sum not exceeding 1,200 rupees:

(*d*) where such revenue is or exceeds 25,000 rupees, but is less than 50,000 rupees ——a sum not exceeding 600 rupees:

(*e*) where such revenue is or exceeds

CENTRAL LIBRARY

15,000 rupees, but is less than 25,000 rupees ——a sum not exceeding 360 rupees:

(*f*) where such revenue is or exceeds 7,000 rupees, but is less than 15,000 rupees——a sum not exceeding 240 rupees; and

(*g*) where such revenue is less than 7,000 rupees——a sum not exceeding 180 rupees.

Junior widows.

In the case of a junior widow of the deceased, the maximum amount of the annuity shall be one-half of the maximum amount to which a senior widow of the deceased would be entitled under the former part of this section.

Brothers and minor sons.

26. In the case of brothers and minor sons of the deceased, the maximum amount of the annuity shall be a sum not more than 1,200 rupees.

Nephews.

In the case of nephews of the deceased, being fatherless minors, the maximum amount of the annuity shall be a sum not more than 600 rupees.

Unmarried daughters, widows of sons and brothers and inferior widows.

27. In the case of unmarried daughters of the deceased, widows of his sons and brothers, and his widows not of his *ahl-i-bradari*, the maximum amount of the annuity shall be a sum not more than 360 rupees.

Continuance of annuities.

28. Subject to the provisions hereinbefore contained, the said annuities shall continue,

(*a*) in the case of a minor son or a minor nephew, till he ceases to be a minor;

(*b*) In the case of a daughter or widow,

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till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance, and

(*c*) in all other cases, till the annuitant dies.

IX.—*Miscellaneous.*

Muhammadan Taluqdars and Grantees empowered to adopt.

29. Every Muhammadan Taluqdar, Grantee, heir or legatee, and every widow of a Muhammadan Taluqdar or Grantee, heir or legatee, with the consent in writing of her deceased husband, shall, for the purposes of this Act, have power to adopt a son whenever, if he or she were a Hindu, he or she might adopt a son.

Such power shall be exerciseable only by writing executed and attested in manner required by section nineteen in case of a will and registered.

Alteration of rules of intestate succession in cases of Taluqdars and Grantees named in list 3 or list 5.

30. Any Taluqdar or Grantee whose name has been entered in the third or fifth of the lists mentioned in section eight, or his heir or legatee, may, at any time hereafter, present to the Chief Commissioner of Oudh a declaration in writing, executed and registered in the manner required by this Act for the execution and registration of an instrument of gift, that he is desirous that the succession to his estate shall, in case of his intestacy, cease to be regulated in the manner described in section twenty-two; and that it shall in future be

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regulated by the ordinary law to which members of his tribe and religion are subject.

On receiving such declaration, the said Chief Commissioner shall cause to be inserted the name of such Taluqdar or Grantee, heir or legatee, in the fourth or sixth (as the case may be) of the lists mentioned in section eight, and shall cause a note thereof to be made in the proper place in the third or fifth (as the case may be) of the said lists, and the succession to such estate shall thenceforward, in case of intestacy, be regulated in the manner provided by section twenty-three.

Reverter to ordinary law of succession

31. Any Taluqdar or Grantee, heir or legatee, may, at any time hereafter, present to the Chief Commissioner of Oudh a declaration in writing, executed and registered in the manner required by this Act for the execution and registration of instruments of gift, that he is desirous that his estate should in future be held subject to the ordinary law of succession to which members of his tribe and religion are subject.

On receiving such declaration, the Chief Commissioner shall cause a note thereof to be made in the proper places in each of the lists mentioned in section eight in which the name of such Taluqdar or Grantee, heir or legatee, has been entered, and thenceforward none of provisions of this Act shall apply to such estate, which shall thenceforward be held

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subject in all respects to the ordinary law of succession to which members of his tribe and religion are subject.

Saving of rights of creditors.

32. Nothing hereinbefore contained shall affect any right which the creditors of any person making a transfer or bequest under the provisions of this Act, would have possessed as against the property comprised in such transfer or bequest if this Act had not been passed.

Awards as to compensation and maintenance.

33. And whereas bodies of Taluqdars have in several cases made awards respecting the provision to be made for certain relatives of Taluqdars, and it is expedient to render such awards legally enforceable; it is hereby further enacted that every such award shall, if approved by the Financial Commissioner of Oudh and filed in his Court within six months after the passing of this Act, be enforceable as if a Court of competent jurisdiction had passed judgment according to the award and a decree had followed upon such judgment.

SECOND SCHEDULE (See Section 4).*

(1) Dig Bijay Singh Raja of Balrampur.
(2) Rao Hardeo Bakhsh Sing of Katiari.
(3) Kashi Parshad, Taluqdar of Sissendi.
(4) Jhabba Singh, Zamindar of Gopal Khera.
(5) Chandan Lal, Zamindar of Moraon (Baiswara).

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* First Schedule contains two letters of the Government about settlement and the form of the Sanad. It is omitted.

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REGULATION XI OF 1816.

A REGULATION *for receiving, trying, and deciding Claims to the Right of Inheritance or Succession, in certain Tributary Estates in Zillah Cuttack*: PASSED *by the Governor-General in Council on the* 10*th May* 1816.

I. WHEREAS it is necessary that provision should be made for receiving, trying, and deciding claims to the right of inheritance or succession in certain tributary estates in Zillah Cuttack, which were excepted by Section xi., Regulation XIV., 1805, from the operation of the general rules for the administration of civil justice, established in the provinces of Bengal, Behar, and Orissa; and whereas the nature of the tenures by which those estates are held, the character of the inhabitants, and other local circumstances, render it expedient that the estates in question should not be subject to partition, but should descend entire and undivided to the persons respectively having the most substantial claim according to local and family usage; the following rules have been enacted, to be in force from the date of the promulgation of this Regulation in zillah Cuttack.

Claims to inheritance or succession to certain tributary estates in Cuttack, how to be tried.

II. All claims to the right of inheritance or succession to any of the under-mentioned tributary estates are to be heard tried, and determined, in the first instance, by the superintendent of the tributary mehals in zillah Cuttack.

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Killah	... Neelgery.	Killah	... Kindeaparah.
Ditto	... Bankey.	Ditto	... Neahgurh.
Ditto	... Joormoo, *alias* Dus-	Ditto	... Rampore.
Ditto	... Nursingpore. [pullah.	Ditto	... Hindole.
Ditto	... Angole.	Ditto	... Teegeroah.
Ditto	... Talcher.	Ditto	... Burambah.
Ditto	... Autgurh.	Ditto	... Dekenal.
Ditto	... Keonjur.	The territory of Mohurbunge	

On what laws and usages such claims are to be decided. Proviso.

III. The superintendent, in deciding cases of the above nature, shall be generally guided by the established laws and usages of the respective tributary estates. Provided, however, that the estates above enumerated shall in no case be considered liable to be divided according to the Hindoo law, but shall descend entire to the person having the most substantial claim according to local and family usage.

Suits not cognizable if cause of action arose before 14th October 1803.

IV.* The superintendent is prohibited from taking cognizance of any suit, the cause of auction in which shall have arisen antecedent to the 14th day of October 1803, the date on which the fort and town of Cuttack were surrendered to the British arms.

Pleaders of the Civil Court to attend the superintendent's Court, and entitled to fees.

V. The established pleaders of the Zillah Court shall attend the superintendent's Court, to be held in the Court-house of the Zillah Adawlut; and they shall receive the same fees as are authorized on the pleading of causes in the Zillah Court; subject, of course, to the prescribed rules in the cause of paupers.

VI.* The Hindoo law officer of the Zillah

* Sections 4 and 6 were repealed by Act 16 of 1874.

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Court is to expound the Hindoo law, in all cases wherein it may be requisite for the due determination of causes pending before the superintendent.

Hindoo law officer of Zillah Court to expound the Hindoo law.

VII. All processes issued in suits instituted under this Regulation shall bear the official seal and signature of the superintendent; and shall be executed by the officers on his establishment, in like manner as all similar processess issued by the Judge of the Zillah Court are executed; and any disobedience and resistance to his process shall be liable to a fine to Government to be fixed by the superintendent, subject to the confirmation of the Court of Sudder Dewanny Adawlut; or, if the offender be a landholder or sudder farmer, and the case appear to call for it, by a confiscation of his estate or farm, commutable to a fine by the Sudder Dewanny Adawlut, or Governor-General in Council.

Issue of process by the superintendent. Penalty for resistance of process.

VIII. In the trial of all suits instituted under this Regulation, the superintendent shall be guided by the general rules prescribed for the trial of civil causes before the Judges of the Zillah Courts, subject to the special provisions contained in this Regulation, or in points not specially provided for to any qualification of the general rules which may be found expedient, and may be sanctioned by the Court of Sudder Dewanny Adawlut.

Rules to be observed in the trial of suits.

IX. It shall not be requisite to use stamped

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Stamped paper not required in these suits.

paper for the plaints, pleadings, decrees, or any papers relative to suits, instituted under this Regulation; nor shall any durkhaust on stamped paper be required for the admission of exhibits, or the issue of summonses to witness, in such suits, when tried in the first instance, or in appeal.

Deposit to be made on account of the pleader's fee.

X.* When the plaintiff or defendant may appoint a pleader to prosecute or defend a suit under this Regulation, he shall deposit in the Court a sum equal to the amount of the pleader's fee, unless from oath or solemn declaration of the party, or from the evidence of two credible witnesses, the superintendent shall be satisfied of the inability of the plaintiff or defendant to make such deposit; in which case he shall be admitted as a pauper, and the stated deposit shall not be required.

Appeal.

XI. In all suits decided and orders passed by the superintendent under this Regulation, an appeal from his decisions and orders shall lie to the Court of Sudder Dewanny Adawlut, provided that the petition of appeal be preferred within three months after the decree or order appealed from shall have been passed.

Rules to be observed on admitting a petition of appeal.

XII. The petition of appeal shall be presented to the superintendent, and shall contain a full and explicit statement of the appellant's objections to the decree or order from which he is disirous to appeal. The appellant, if not admitted as a pauper under Section x., shall

* Repealed by Act 16 of 1874. See Act I., 1864.

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at the same time tender good security for the payment of any costs which may be adjudged on the determination of the appeal by the Sudder Dewanny Adawlut, or if unable to give such security, shall make oath or subscribe a solemn declaration to his inability, or adduces two creditable persons to prove the same.

Duty of superintendent on receipt of petition of appeal.

XIII. On receipt of the petition of appeal, with the prescribed security, or proof of inability required in failure thereof, the superintendent shall cause a copy to be made of the decree or order from which the appeal may be required, and within fifteen days shall certify and transmit the same, with the petition of appeal, to the Court of Sudder Dewanny Adawlut.

Procedure if the petition of appeal be admitted.

XIV. *First.* When the Court of Sudder Dewanny Adawlut may admit the appeal, they will cause a precept to be issued, under the seal of the Court and the signature of the register, addressed to the superintendent, requiring him within such period as may be limited by the precept to furnish a complete record of all papers received and proceeding held in the cause: and also to call upon the respondent or respondents for his or their answer, or to appear in person or by vakeel, within a certain time, before the Sudder Dewanny Adawlut and deliver his or their answer to that Court.

Second. The superintendent, on receipt of the precept, shall comply with the exigency

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Superintendent to comply with precepts of Sudder Court.

thereof, as required ; or in the event of his not being able to carry the same into complete execution within the prescribed period, shall certify the same to the Court of Sudder Dewanny Adawlut, with notice of the period within which a further return will be made.

Parties may plead their own causes in appeal, &c.

XV. It shall be optional with appellants and respondents, in appeals to the Sudder Dewany Adawlut, under this Regulation, to attend in person or by vakeel for the prosecution or defence of their appeals before that Court ; or to deliver their proceedings to the superintendent of the tributary mehals ; who in the latter case, shall forward them, as soon as received, to the Sudder Dewanny Adawlut, and communicate to the parties any orders which may be issued by that Court.

Sudder Court may either refer the cause back to superintendent or direct further evidence.

XVI. In cases wherein it may appear to the Court of Sudder Dewanny Adawlut that the cause in appeal has not been sufficiently it, vestigated, and consequently that further evidence is required for the just determination of it, that Court is empowered to refer the cause back for further trial and judgment to the superintendent, or to direct that further evidence be taken and transmitted to the Court.

Sec. iii. applicable to decisions of the Sudder Court.

XVII. The provisions contained in Section iii., by which the decisions passed by the superintendent are to be governed, shall be considered equally applicable to the decisions

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of the Sudder Dewanny Adawlut in all appeals under the Regulation.

Also Secs. iv. to vi., and viii to x.

XVIII. The principles of the several provisions contained in sections iv., v., vi., viii., ix., and x. of this Regulations, shall also be considered applicable to all appeals from decisions or orders of the superintendent of the tributary mehals in zillah Cuttack, which may come before the Court of Sudder Dewanny Adawlut.

Execution of decree to be postponed, if appellant give sufficient security.

XIX. *First.* In cases of appeal to the Sudder Dewanny Adawlut from any decree or order of the superintendent involving a transfer of property, or any change in the actual possession of property, the decree or order appealed from shall not be carried into execution during the appeal to that Court, provided the appellant shall give good and sufficient security for the performance of the final decision which may be passed upon the appeal; and in no instance shall the superintendent cause to be carried into execution any such decree or order passed by him, until the period allowed for the appeal may have elapsed

If not, the decree shall be executed, provided respondent give sufficient security.

Second. In the event of the appellant's not giving security for staying the execution of the decree a appealed from, and of its being consequently put into the execution whilst an appeal is pending, good and sufficient security shall be taken from the respondent for the performance of the final decision which may de passed upon the appeal.

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If neither party give the requisite security, the estate to be attached.

Third. In case neither party shall be able to give the requisite security, the estate in dispute shall be attached by order of the superintendent, until the security required shall be received, or until the final determination be passed by the Sudder Dewanny Adawlut upon the case.

Communication to Government before execution of any decree.

Fourth. No decree or order, whether of the superintendent of the tributary mehals, or of the Sudder Dewanny Adawlut, involving a transfer of the property or an actual change in the possession of any of the estate enumerated in Section ii, of this Regulation, shall be carried into execution without a previous communication being made by the Sudder Dewanny Adawlut to Government; in order that sufficient time may be afforded for the adoption of any precautionary measures which may be eventually judged requisite to support and enforce the execution of the decree or order without hazard to the public tranquillity.

To what amount decisions of Sudder Court final.

XX.* *First.* The judgments of the Sudder Dewanny Adawlut shall be final and conclusive in all appeals heard and determined by the Court under this Regulation, within the limitation or appeals to the King in Council prescribed by the Statute 21, George III., EP.

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* Section XX and in Section XVIII the figures words IV, VI and X were repealed by Act 16 of 1874.

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lxx., Section xxi., *viz.*, five thousand pounds, or sicca rupees 43,103.

Appeals to the Privy Council.

Second. If the amount or value adjudged shall, exclusive of costs of suits, exceed the sum of five thousand pounds, or sicca rupees 43,103, a further appeal will be open to His Majesty in Council; and shall be received by the Sudder Dewanny Adawlut, under the provisions which have been enacted for receiving such appeals in Regulation XVI, 1797.

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Twenty-five Questions addressed to the Rajahs and Chiefs of the Regulation and Tributary Mehals, by the Superintendent, in 1814, and the Answers given thereto, Illustrating the Established Practice in regard to Succession to the Guddee, &c.

PART I.

Tributary or Non-Regulation Mehals.

Question and Answer 1.

Question.—Among the Gurjat Rajahs how many wives is it customary to take?

Name of Killah.	*Name of Rajah.*	*Answer.*
Mohurbhunj	Rajah Tri Bikruma Bhunj ...	It is by no means certain, some Rajahs marry four, some five, and others, as many as seven.
Keonjhur, or properly Kandoojhuri ...	Rajah Janardun Bhunj ...	
Dhankanal...	Rajah Kroostno Chunder Mohundro Bahadoor ...	
Burumba ...	Rajah Pindick Mungraj ...	
Teghereah ...	Rajah Chumputte Sing ...	
Talchere ...	Rajah Bhageruthee Hurry Chundun Mahapater ...	
Hindole ...	Rajah Kishen Chunder Murdraj Jugdeb	
Nursingpore	Rajah Juggannath Mansing Hurry Chundun Mahapater.	
Bankee ...	Rajah Brajbeharie Hurry Chundun	
Duspullah *alias* Joremoo ...	Rajah Kroostno Chunder Bhunj	
Ungool ...	Rajah Somenath Sing ...	
Nyagurh ...	Rajah Binaik Sing Mandhatta	
Khundparra	Rajah Nursing Bhowurbur Murdraj	
Nilgiree ...	Rajah Ram Chunder Murdraj Hurry Chundun ...	
Runpore ...	Rajah Bajrodhur Nurrindur ...	
Autgurh ...	Rajah Sreekuru Gopeenath Bewarta Putnaik ...	

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QUESTION AND ANSWER II.

Question.—By what titles are the several Ranees distinguished.

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur...	The first Ranee is called the Pat Ranee; the second the less (or Sǎǎn) Pat Ranee; all the rest simply "Ranee."
Dhankanal ...	The title of the first Ranee is Bara (or Chief) Pat Maha Dae; of the second Sǎǎn (or less) Pat Maha Dae; of the third Nova (or new) Pat Maha Dae; of the fourth simply Pat Maha Dae. The Ranees married by the Rajah from among his own caste (zaat) are called simply Maha Dae, while Ranees of left-handed marriages are called Phool Bahee.
Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore Autgurh.	Manima and Ranee.

QUESTION AND ANSWER III.

Question.—What titles do the sons born of the respective Ranees receive from their father?

Name of Killah.	*Answer.*
Mohurbhunj ...	The eldest son, of whichever Ranee born, receives the title of "Tikeyet Baboo." The second of "Chotra." The third of "Routra." The others are called "Baboo."
Dhankanal ...	The tile of the son of the Chief Ranee is "Joobraj;" of the second "Gumbheer Sawant;" of the third and fourth "Rai" and "Sout Singhar" respectively.
Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra.	"Gumbheer Sawant."

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Name of Killah.	*Answer.*
Nilgiree ...	... Same as Mohurbhunj.
Runpore, Autgurh	... The eldest son is called Gumbheer Sawant and the others Rai.

Question and Answer IV.

Question.—On the demise of a Rajah, which Ranee's son succeeds?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur ...	On the demise of a Rajah, his eldest son succeeds, whichever of the Ranees may be his mother.
Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Aatghur.	On the death of a Rajah, his eldest son succeeds, whichever Ranee be his mother.

Question and Answer V.

Question.—In case the Pat Ranee have no son, which Ranee's son succeeds?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khund, parra, Nilgiree, Runpore, Autgurh.	The succession does not depend on the issue of the Pat Ranee. The eldest son, born of whichever Ranee, becomes Rajah.

Question and Answer VI.

Question.—On what title does the succession depend?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur ...	On that of Tikeyet "Baboo."
Dhankanal ...	The son who succeeds his father as Rajah is during the father's life time, called the "Joobraj."

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Name of Killah.	*Answer.*
Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Runpore.	On the title of "Gumbheer Sawant."
Nilgiree ...	... On the title of Tikeyet "Baboo."
Autgurh ...	... The succession does not depend on the title, the eldest son of whichever Ranee born succeeds.

Question and Answer VII.

Question.—Are all the Rajahs of the same caste, and what Rajahs intermarry into each other's families?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur ...	... The Rajahs of Bissenpore, Kasurgur, and Singbhoom are of the same caste, and intermarriages into their families take place.
Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra.	The Rajahs of Talchere, Ungool, Burumba, Nursingpore, Hindole, Teghereah, Bankee, Duspullah, Nyagurh, Khundparra, Mudhoopore, and Sookinda, these intermarry among themselves. But for some years past, intermarriage into the families of these Rajahs has not taken place, because there are no legitimate Rajahs.
Nilgiree ...	... Marries from his own caste, who reside at "Kangsari Koftipudda."
Runpore ...	... Marries from among the Khunds.
Autgurgh ...	... Marries from the family of the Rajah of Dompparra, and the Karana or Mahanty caste.

Question and Answer VIII.

Question.—When there is no family of same caste, from which a Rajah can marry, where and how does he marry?

Name of Killah.	*Answer.*
Mohurbhunj ...	... When there is no other alternative, he marries a daughter of the Rajah of Nilgiree's family.

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Name of Killah.	*Answer.*
Keonjhur, Dhankanal, Burumba, Tegherea, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra.	In case there should be no daughter of the families of the Rajahs of Bissenpore, Kasurgur, Singhbhoom, &c., he marries a daughter of the Bughail caste. Should the Rajah receive as a wife the daughter of any respectable person, not of his own case, she is called a Phool Bahee.
Nilgiree ...	... In the supposed case, he would marry into a Mahanty or Khundiat family.
Runpore ...	.. There are many castes, besides the Khunds, but the Rajah does not marry out of that caste.
Autgurh ...	... Does not marry out of his own caste, although there are many besides.

Question and Answer IX.

Question.—After the demise of a Rajah, and his son succeeding him, what are the sources from which the ex-Rajah's Ranees and brothers, and also the brothers of the new Rajah, derive their maintenance; and what are their respective rights and the position they hold?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	After the Rajah's death it is usual for all the Ranees to become suttees; but those who do not become suttees.....and the brothers and nephews of the deceased Rajah, and the brothers of the new Rajah, receive a maintenance and continue subordinate to the Rajah. What rights have they?

Question and Answer X.

Question.—On the death of the Rajah, suppose he leave no son born of any of his Ranees, but leaves a brother (S) and sons by his Phool Bahees and concubines; and suppose his Ranees have not become "suttees," who, in such a case, would succeed?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	In case a Rajah demise leaving no son by any of his Ranees, he is succeeded by his brother; and if he leave no brother, then the succession is the right of his brother's son. The son of a concubine, or slave girl, has no right to the succession.

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QUESTION AND ANSWER. XI.

Question.—If a Rajah dying leave sons by any of his Ranees save the Pat Ranee, and by his Phool Bahees and concubines, and also leave a brother (or brothers) and nephew (S), and his Ranees also survive him, who, in such a case, would succeed to the Raj?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree Runpore, Autgurh.	If a Rajah demise, leaving no son by his Pat Ranee, but leaving sons by his other Ranees, and concubines and slave girls, as well also as a brother (S), and nephew (S), and his Ranees survive him, the eldest son of whichever Ranee born will succeed to the Raj.

QUESTION AND ANSWER XII.

Question.—If at his demise a Rajah leave a son (S) born of a concubine, but none born of either his Phool Bahees or slave girls, and neither brother nor brother's son, nor Pat Ranee, whose, in this case, would be the succession?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore. Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	On the death of a Rajah, who leave no son, (by a Ranee?) nor brother, nor brother's son, though there may be sons born to him by his Phool Bahees, slave girls, and concubines, then one of the brethren of his grandfather's, who is nearest of kin, will be rightful claimant of the Raj. In default of any such the son of a Phool Bahee has the next right. But in the time of the Maharattas it depended on the expenditure of money, and the side taken by the Sirdars and Paiks; hence is it that in every Gurjat the sons of slave girls are now on the Guddee.

Note.—The word here translated "Grandfather," is in the original Persian "Judd," which is undoubtedly "Grandfather."

(Sd.) W. A. LACEY.

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Question and Answer XIII.

Question.—At the death of a Rajah, suppose he leave a brother, a nephew, a Pat Ranee, and a daughter by the Pat Ranee,—who would succeed?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	The brother.

Question and Answer XIV.

Question.—At his death suppose a Rajah leave neither brother nor nephew, but that his Pat Ranee survive, and he leave (*a*) daughter (S) by another Ranee, who would, in such a case, succeed?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	Then one of the ex-Rajah's grand-father's (Judd) brothers (or brethern) who might be nearest of kin would, in such a case, succeed?

Question and Answer XV.

Question.—Should a Rajah die, leaving neither brother nor nephew, and his Pat Ranee be also dead, but the other Ranees be alive, and have daughters, who would succeed?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	Similar to that given to Question XIV.

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QUESTION AND ANSWER XVI.

Question.—In case a Rajah possessing (all heirs, should, during his life time, sell or give away his Raj, would such sale or gift be considered valid, and has such a case ever occurred?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	It would not be proper (valid): such a case has never occurred. If, however, the sale or gift be made in favor of his son, it would be proper (valid).

QUESTION AND ANSWER XVII.

Question.—Suppose a Rajah have no principal (or direct) heir while alive, and disposes, by sale or gift, of his Raj, would the transaction be valid?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	An instance of this kind has never occurred, but if any Rajah were to do so, it would be proper according to the Shastras.

QUESTION AND ANSWER XVIII.

Question.—After the death of a Rajah, has the party who (we may suppose) is in possession of the Raj by purchase or gift, the option either to confirm or resume the Jagheers, &c., allowed for the maintenance of the deceased Rajah's paternal grandfather's brethern?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	Such a case has never occurred; but supposing a case did occur, the Jagheers allowed for the maintenance of the Rajahs brethern, &c., could not be resumed while they lived.

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Question and Answer XIX.

Question.—If a Rajah dispose of his Raj by gift or sale do his brethern forfeit thereby their rights?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	Besides a certain allowance for maintenance, his brothers would have no rigfits in such a case.

Question and Answer XX.

Question.—The various (description of) of Paiks, Sirdars and Ghatwalls of the Gurjats, are they paid in money, or by Jagheers?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspulla, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	Paiks and Sirdars are Jagheer servants, and the Ghatwalls are paid some in money and some by service lands.

Question and Answer XXI

Question.—Is it the custom for such Jagheer servants as are in the actual enjoyment of Jagheers, on an emergency, or their services being required, to present themselves of their own accord alone; or have the Sirdars authority, or is it customary for them to assemble Paiks, &c., when wanted, and according to the number required, &c.?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	They present themselves of their own accord. and if more men are required, collect and bring them.

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Question and Answer XXII.

Question.—If on death of a Rajah, he should leave brother, nephew, Pat Ranee, and other Ranees, and also an adopted son, but no son born of his own body, whose, in such a case, would be the right to the Raj?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	The adopted son's.

Question and Answer XXIII.

Question.—If, on demise of a Rajah, he leaving no son born of his own body, though a brother and nephew, Pat Ranee and other Ranees survive; the Pat Ranee, in accordance with the commands of the deceased Rajah, adopt a son, whose, in such a case, would be the succession?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhakanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	The adopted son's.

Question and Answer XXIV.

Question.—If, after the death of Rajah, who leaves brother, nephew, Pat Ranee, and other Ranees, but no son born of his own body; the Pat Ranee should have, without the consent of the Rajah, adopted a son, whose would be the succession?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	It would be the right of the brother.

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QUESTION AND ANSWER XXV.

Question.—Should a Rajah have no son born to him, and giving up the hope of having one, he should adopt a son, and after that a son be born to him, then, on his death, who would succeed him?

Name of Killah.	*Answer.*
Mohurbhunj, Keonjhur, Dhankanal, Burumba, Teghereah, Talchere, Hindole, Nursingpore, Bankee, Duspullah, Ungool, Nyagurh, Khundparra, Nilgiree, Runpore, Autgurh.	A case of this kind has never happened, but under such circumstances the right would belong to the Rajah's own son.

WM. A. LACEY,
Assistant to Commissioner.

PART II.

Tributary or Regulation Mehals.

QUESTION AND ANSWER I.

Question.—Among the Gurjat Rajahs, how many wives is it customary to take?

Name of Killah,	*Name of Rajah.*	*Answer.*
Khordah ...	Moha Rajah Muckoond Deo ...	There is no certain rule; some marry one, some two, some three, some four, some five, while others as many as seven.
Aul ...	Rajah Ram Kroostno Deo ...	
Puttea ...	Rajah Modhoosoodun Deo ...	
Kanika ...	Rajah Juddoo Nath Bhunj ...	
Koojung ...	Rajah Modhoosoodun Sundh...	
Mudhoopoor ...	Rajah Beersoodersun Dheer Nurindur	
Sookindah ...	Rajah Dhroobojoy Bhooputty Hurrichundun Mahapater ...	
Chadra ...	Rajah Modhoosoodun Nurindur	
Doomparrah ...	Rajah Pooroosotum Bhrumurbur	

QUESTION AND ANSWER II.

Question.—By what titles are the several Ranees distinguished?

Name of Killah.	*Answer.*
Khordah, Aui, Puttea, Kanika, Koojung.	The first married is entitled the Pat Mahadæ, the rest Mahadæ. Besides such, those of other castes, kept as Phool Bahees, are entitled "Ranee."

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Name of Killah.	*Answer.*
Mudhoopoor, Sookindah, Chadra, Domparrah.	The title of the first Ranee is Bara (or chief) Pat Mahadæ; of the second sââv or less Pat Mahadæ; of the third Nôva (or new) Pat Mahadæ. Besides these, those Ranees married from among a Rajah's own caste people are called simply "Mahadæ," and those of left handed marriages are called Phool Bahees.

Question and Answer III.

Question.—What titles do the sons born of respective Ranees receive from their father?

Name of Killah.	*Answer.*
Khordah	The legitimate eldest son of the Pat Mahadæ is intituled "Janamani." The legitimate sons of the other Ranees are called "Rai."
Aul, Puttea ...	The legitimate sons of the first Ranee are intituled "Beerbur," "Janamani," "Santâ," "Bhrumurbur," "Jana," "Paikra." The legitimate sons of the other Ranees called "Barajana," "Santâ," and "Rai."
Kanika	The legitimate son of the Pat Mahadæ is called "Mungraj."
Koojung	The legitimate son of the Pat Mahadæ is intituled "Beerbur."
Mudhoopoor, Sookindah, Chadra, Domparrah.	The title of the son of the Bara (or chief) Pat Mahadæ is "Gumbheer Sawant."

Question and Answer IV.

Question.—On the demise of a Rajah which Ranee's son succeeds?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	The legitimate son of the Pat Mahadæ is the rightful successor to the throne.

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Question and Answer V.

Question.—In case the Pat Ranee have no son, which Ranee's son succeeds?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	If there be no son legitimately born of the Pat Mahadæ, then the succession devolves on the eldest born among the legitimate sons of the other Ranees.

Question and Answer VI.

Question.—On what title does the succession depend?

Name of Killah.	*Answer.*
Khordah	On the title of "Janamani."
Aul, Puttea ...	On the title of "Beerbur."
Kanika	The right of succession depends on the title of "Mongraj," but up to the present time, with the exception of Balachudra Bhunj, deceased, who received from his father the title of "Beerbur," all have not succeeded to the Raj without the title of "Mongraj."
Koojung	On the title of "Beerbur."
Mudhoopoor, Sookindah, Chadra, Domparrah.	On the title of "Gumbheer Sawant."

Question and Answer VII.

Question.—Are all the Rajahs of the same caste, and what Rajahs intermarry into each other's family?

Name of Killah.	*Answer.*
Khordah	In a family of the Bughail caste.
Aul	Marries, into the families of the Rajahs of Khundparra, Koojung and Puttea.
Puttea	Marries into the families of the Khundparra and Aul Rajahs.

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Name of Killah.	*Answer.*
Kanika	Marries into the families of the Rajahs of Killah Chadra, and the Native Zemindars of Pergunnah Sanaot, in the Sirkar of Bhudruck, and also the families of Barana or Mahanty caste.
Koojung	Marries into the families of the Rajahs of Aul, Murichpore and Hurrispore.
Mudhoopoor ...	Marries in the families of the Rajahs of Killah Talchere, Ungool, Burumba, Sookindah, &c.
Sookindah ...	Marries from the families of the Rajahs of Talchere, Ungool, Burumba, &c.
Chadra	Marries from the families of the Rajahs of Kanika, Talchere, Ungool, &c.
Domparrah ...	Marries into the families of the Rajahs of Talchere, Ungool, Burumba, Nursingpore, Hindole, Teghereah, Duspullah, Autgurh, &c.

Question and Answer VIII.

Question.—When there is no family of the same caste from which a Rajah can marry, where and how does he marry ?

Name of Killah.	*Answer.*
Khordah	When there is no other alternative, they marry Phool Bahees from other castes.
Aul	If there should be no daughter of the house of the Rajah of Khundparra, &c., they procure a daughter of the Bughail caste and marry her, and in cases where it cannot be helped, they marry after the Phool Bebha fashion.
Puttea	In the absence of a daughter of the Aul or Khundparra Rajah's families, they procure one of the Bughail caste and marry her; where there is no other alternative, they marry in the Phool Bebha fashion.
Kanika, Koojung ...	Where they have no other choice they marry into the family of a Khandait or Mahanty.
Modhoopoor, Sookindah, Chadra, Domparrah.	They marry a daughter of the Bughail caste.

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Question and Answer IX.

Question.—After the demise of a Rajah, and his son succeeding him, what are the sources from which the ex-Rajah's Ranees and brothers, and also brothers of the new Rajah derive their maintenance, and what are their respective rights, and the position they hold?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	They receive food and clothing, and remain in subordination to the Rajah. They have no rights.

Question and Answer X.

Question.—On the death of the Rajah, suppose he leave no son born of any of his Ranees, but leaves a brother (S) and sons by his Phool Beebahees and concubines, and suppose his Ranees have not become "Suttees," who in such a case would succeed?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	The son born of (the) Phool Beebahee becomes Rajah.

Question and Answer XI.

Question.—If a Rajah dying leave sons by any of his Ranees, save the Pat Ranee, and by his Phool Beebahees and concubines, and also leave a brother (or brothers) and nephew (S) and his Ranees also survive him, who in such a case would succeed to the Raj?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	When there is no son born of the Pat Ranee, the eldest of the sons of the other Ranees becomes Rajah.

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QUESTION AND ANSWER XII.

Question.—If at his demise a Rajah leave a son, (S) born of a concubine, but none born of either his Phool Beebahees or slave girls, and neither brother, nor brother's son, nor Pat Ranee, nor daughter by a Pat Ranee, whose, in this case, would be the succession ?

Name of Killah.	*Answer.*
Khordah	On the demise of a Rajah, if he have no brother nor nephew, and no son born of the Pat Ranee, Phool Beebahees, or slave girls, but there be a son (or sons) born to the Rajah by a concubine, the latter would become the successor to the Raj.
Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	If on the demise of a Rajah there should be none of the heirs named in the question, but a son born of a concubine, the latter might succeed if no brother (brethern) connected in the late Rajah's grandfather (Peta Moho) were alive. In the time of the Mahrattas, however, the point depended on the support of the Sirdars, and the expenditure of money, and for this reason is it that in every Gurjat the sons of slave girls are the Rajahs.

QUESTION AND ANSWER XIII.

Question.—At the death of a Rajah, suppose he leave a brother, a nephew, a Pat Ranee, and a daughter by the Pat Ranee, who would succeed ?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah	The brother would be the rightful claimant of the Raj.

QUESTION AND ANSWER XIV.

Question.—At his death, suppose a Rajah leave neither brother nor nephew, but that his Pat Ranee survive, and he leave (a) legitimate daughter by another Ranee, who would in such a case, succeed ?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	The nearest of kin among the brothers of the Rajah's grand-father, (Peta Moho—Judd) would in such case succeed.

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Question and Answer XV.

Question.—Should a Rajah die, leaving neither brother nor nephew, and his Pat Ranee be also dead, but the other Ranees be alive, and have daughters, who would succeed?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah	The nearest of kin among the brothers of the Rajah's grand-father, (Peta Moho—Judd) in such case succeeds.

Question and Answer XVI.

Question.—In case a Rajah possessing (all) heirs should, during his lifetime, sell or give away his Raj, would such sale or gift be considered valid? and has such a case ever occurred?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	It would not be right, and such a case has never happened; but if done in favour of a son it would be right.

Question and Answer XVII.

Question.—Suppose a Rajah have no principal or direct heir while alive, and disposes by sale or gift of his Raj, would the transaction be valid?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	Such an instance has never taken place, but the transaction would be correct inaccordance with the Shastras.

Question and Answer XVIII.

Question.—After the death of a Rajah, has the party who (we may suppose) is in possession of his Raj by purchase or gift, the option either to confirm or resume Jagheers, &c., allowed for the maintenance of the deceased Rajah's paternal grandfather's relatives?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah	An instance of this kind never took place, but the Jagheers, &c., of parties entitled to the same, could not be resumed as long as they lived.

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QUESTION AND ANSWER XIX.

Question.—If a Rajah dispose of his Raj by gift or sale, do his brethren forfeit thereby their rights?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	Besides food and clothing to a fixed extent, the brothers have no claim.

QUESTION AND ANSWER XX.

Question.—The various (description of) of Paiks, Sirdars and Ghatwalls of the Gurjats, are they paid in money, or by Jagheers?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	Paiks and Sirdars are Jagheer servants; Ghatwalls are some Nugdee, (or paid by wages) and some Jagheerdars

QUESTION AND ANSWER XXI.

Question.—Is it the custom for such Jagheer servant as are in the actual enjoyment of Jagheer, on an emergency, or their services being required to present themselves of their own accord alone, or have the Sirdars authority, or is it customary for them to assemble Paiks, &c., when wanted, and according to the number required, &c.?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Dom parrah.	They present themselves, of their own accord, and if need be, collect and bring other men.

QUESTION AND ANSWER XXII.

Question.—If, on death of a Rajah, he should leave brother, nephew, Pat Ranee, and other Ranees, and also an adopted son, but no son born of his own body, whose in such a case would be the right to the Raj?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Doomparrah.	In this case the succession would belong to the adopted son.

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QUESTION AND ANSWER XXIII.

Question.—If, on demise of a Rajah, he leaving no son born of his own body, though a brother and nephew, Pat Ranee, and other Ranees survive, the Pat Ranee, in accordance with the command of the deceased Rajah, adopt a son, whose in such a case would be the succession?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	In this case the right would belong to the adopted son.

QUESTION AND ANSWER XXIV.

Question.—If, after the death of a Rajah who leaves brother, nephew, Pat Ranee, and other Ranees, but no son born of own body, the Pat Ranee should have, without the consent of the Rajah, adopted a son, whose would be the succession?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	In this case the brother would have the right.

QUESTION AND ANSWER XXV.

Question.—Should a Rajah have no son born to him, and giving up the hope of having one, he should adopt a son, and after that a son be born to him, then, on his death, who would succeed him?

Name of Killah.	*Answer.*
Khordah, Aul, Puttea, Kanika, Koojung, Mudhoopoor, Sookindah, Chadra, Domparrah.	In this case the legitimate son would possess the right.

WM. A. LACEY,

Assistant to Commissioner.

CENTRAL LIBRARY

INDEX.

A.

PAGE.

ACCRETIONS—
succession to 294

ACCUMULATION—
as regards immoveables 299
holder can dispose of 129
succession to 294, 299
moveables 298
when accretions 297

ACT—
5 of 1859 ... ... 371—373
1 of 1869 ... ... 478—507
3 of 1874 ... ... 409—446
5 of 1886 ... ... 446—448
4 of 1862 477
11 of 1901 477
3 of 1904 ... ... 374—409

ADOPTED SON—
may divest undivided brother 257
can not take when there is a direct male descendant ... 256

ADOPTION—
widow of the last male holder alone can adopt 257
by widow of Vatandar invalid when property devised to daughters 174
invalid when widow of Vatandar adopts after once adopting ... 174
under Malabar law 276

ADVERSE—
possession 335
see Limitation.

AIDA—
see Maintenance 134

ALIENATION—
see Vatan, Tarwad, Inam, Impartible property, Limitation.
impartible estates alienable until contrary custom is proved ... 126
of tarwad property 219

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

ALIYA-SANTAN— PAGE.
law 276, 277
ANDRAVAN—
his rights 219
APARARKA—
rule about immemorial time 319
ARYANS—
pastoral people 1
nomads 2
history of their early social and political constitution ... 3
king not priest 4
king originally leader of migration 5
caste system among 6
constitution of society among 9
originally no kings 38
Kingship and slavery 38
ATKINSON—
historical account of Rajas 330

B.

BABOOANA GRANTS—
see Maintenance, Durbhangha 139
BANKURA—See Ghatwalis, Digwaris
BELGAM ZAMINDARY 290
BENGAL SETTLED ESTATES ACT ... ... 374—409
BETTIA RAJ—
its history 286
succession in 287
BHARATA—
reasons of the war of 230
BHATTIBRITI—
inams 174
BHUTALA PANDYA'S CODE 276
BHUYANS 59, 67
BIRBHUM GHATWALIS—
see Ghatwalis.
BRAHMANS—
atharvans among Persian and Indo-Aryans 6
were also warriors 7
in ancient India 40, 42
Brahmans and Kshatriyas originally one tribe 42

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

C.

CANARESE— PAGE.

customs 276

CASTE—

among early Aryans 6
among Persians 6, 39
in ancient India 44

CERTIFICATE—

see succession certificate.

CHANGALA 53

CHERAPUNJEE RAJ—

jurisdiction of British Courts 301

CHIEFTAINSHIPS—

whether partible 9
rule among Celts 9

CHITTOOR—

pollium 246

CHOTA NAGPORE— 59, 60, 148
see Tekaits, Maintenance

CHOWDHRIES—

under Muhammadans 57, 60, 61

CHRISTIAN TALUQDARS 343

CIVIL COURT—

see Government.

power to declare right of Ghatwals 206
can give relief when commissioner acts beyoned his authority in appointing Ghatwal's successor 200, 209
Civil Court's power to interfere in case of dismissal of Ghatwals 208, 209
Right to make a declaration that a person has a right to be regarded as Vatandar 305
power to grant relief against acts of Government 304

COLEBROOKE—

on custom 305, 308

COLLECTOR—

power of appointing and dismissing Ghatwals 208
power to resume Inams 209
power to recover possession of improperly alienated vatans ... 172
mere order that possession be delivered to applicant is without jurisdiction 172
such order does not prevent acquisition of title by 12 years possession 172
Collector not bound by the provisions of the Limitation Act ... 172

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

COMMUNAL SYSTEM 28

COMPROMISE—
consequences 122
does not make self acquired property of widow ... 122
decrees how for binding 359, 364
effect of compromise between proprietor and maintenance holder 360, 361

CONFISCATION—
see Succession, grant, regrant
consequences of 121, 281, 292

CRORIES 59, 60

CUSTOM—
see Evidence, Family custom.
ancient Hindu law about 305, 301
Mimansa on— 306, 308
rules of Smritis 309, 310
Blackstone on— 311, 312
unimportant families can't override law 312
custom of family 213
custom of district 313
must be certain, invariable and continuous 314
small estates may be impartible 318
can be put an end to— 318
time necessary to raise presumption of ancient custom ... 319
rule of Yajnavalkya about time 319
rule of Apararka about time 319
Grotius considered 100 years sufficient 317
rule of the Privy Council about time 320
1773 or 1793 may be regarded as the period of legal memory 320, 321
essential attributes of custom 321, 325
must be reasonable 321, 324, 325
must be certain as regards nature and locality 322
continuous, peaceable and uninterrupted user 323
discontinuance may destroy custom 325
what is admissible and sufficient evidence of— ... 326, 331
continuance for 6 or 7 generations not sufficient 326
custom of impartibility of three kinds, family, local and territorial 318
custom of families of same group whether sufficient ... 327
decrees about custom 328
titles of honor how for relevant 328
oral evidence when sufficient 329
hearsay how for admissible 329
custom of Gaddinashinee 329

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

PAGE.

CUSTOM—*contd.*

statements of deceased persons 330
historical accounts 330
manual of titles 330
how proved 331
contest whether necessary 331
consensus acceptance necessary 331
how far admitted under Act I of 1869 ... ... 332, 336
how far superseded by acceptance of Sanad 333
custom not excluded by Act 334

D.

DARBHANGA RAJ—

its history 79
maintenance grants of 139

DAUGHTERS—

of junior member entitled to maintenance and marriage expenses 131

DAUGHTER—

takes life estate in impartible property 261
eldest takes 259
right of survivorship 259
does not take in some districts 260

DAUGHTER'S SON—

right of succession 259

DAYADI PATTANS 73, 150
succession in 278
impartible and inalienable 278

DEBTS—

successor of impartible estate how far bound to pay ... 126

DECREE—

see maintenance, resjudicata, compromise, evidence

DESHMUKHS 45, 52, 53
their rights hereditary and saleable 53

DESHPANDE 45, 52, 53
their rights hereditary and saleable 54

DESAI—

his position 171

DEUR ESTATE 122

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

PAGE.

DIGWARS—
like Ghatwals 198
responsible to Government for duties 198
power of appointment and dismissal with Government ... 199
no right to minerals 199
Digwaris of Bankura and Manbhoom described by Privy Council 206
are hereditary and inalienable 206
the next male heir has right to be appointed 206
Government right to appoint 206
Government can dismiss for misconduct 206

DOOMRAON RAJ—
its history 76

E.

ELDEST—
see succession
his extra share—disuse of that share 29

ENFRANCHESEMENT— 176, 179, 188
see Inam.

EVIDENCE OF CUSTOM—
see custom
evidence of custom of same group of families 327
decrees. 328
oral 329
hearsay 329
statements of deceased persons 330
about Gaddinashini 329
historical accounts 330, 331
Manual of titles 330
Tod's Rajsthan, Steele's customs 281
Ward's account, Sterling's Orissa 331
books of hereditary Bhats or bards 331
Forbes' Rash Mala 331

F.

FAMILY CUSTOM—
see Custom, Evidence
impartibility a— 123
families of little importance ought not to have customs of their own 312
what would be sufficient for— 312, 315
can be put an end to— 318, 319

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

PAGE.

FEMALE HEIRS—
see Succession.
their right of succession 259
take limited interest 261
right to vatans 271

FEUDAL SYSTEM—
impartibility under it— 10

FEUDAL TENURES—
see military tenures service tenures.

FEUDATORY STATES—
jurisdiction of British Courts 300, 304
power to sue in British Courts 301, 303
questions of succession 300, 304
question about maintenance 303, 304

G.

GADIS OF—
Chota Nagpore and Behar 148

GARJAT MAHALS—
of Orissa 147, 266

GHATWALI—
see Succession, Resumption.
history of— 183, 192
Beerbhoom ghatwalis their incidents 192, 193
hereditary and impartible 192
are inalienable 193, 194
grants in lieu of wages may be resumed 192
but not when granted before permanent settlement ... 193
ghatwalis impartible 193
succession in Beerbhoom ghatwalis governed by Reg. 29 ... 194, 199
eldest son succeeds 201
natural heir succeeds 200
Beerbhoom ghatwalis not ancestral joint-property ... 193, 195
and are exclusive property of ghatwals 194
female heirs not excluded 194
descendants in Reg. 29 of 1814 include heirs generally 194, 195
not liable to sale in execution 195
are life-tenures 195
can't be sold in executive of rent decree 195
not liable to attachment 195
surplus profit may be attached and taken by creditor's during life-time of ghatwal 195

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

GHATWALI—*contd.* PAGE.

power to grant permanent leases 195, 198
beyond ghatwal's power 197
perpetual lease for maintenance bad 196
ghatwal not entitled to compensation money for lands acquired for public purposes 198
ghatwalis created before, 1793 when services were dispensed with can't be resumed by zamindar 198, 213
purchaser at revenue sale can't cancel above ghatwalis ... 198
zamindar can't enhance 198
no right to minerals 199
ghatwals of Sarhat have right to minerals 199
power of appointing and dismissing in the Commissioner ... 200
Commissioner no right to consider eligibility, but must appoint the natural heir 200
Civil Court can give relief if Commissioner acts beyond his authority 200, 209
in Bankura Government has power to dismiss for misconduct ... 200
Kharagpore and Bhagalpore Ghatwalis described 200
are impartible and governed by the rule of primogeneture 200, 201
they are hereditary and transferable 201
when transfers acquiesed in for 12 years can't be questioned ... 201
are dependent taluks 201
can't be resumed by revenue sale purchaser 201
their rents can't be enhanced 201
are exclusive property of holder 202
females may succeed to— 262
are not joint ancestral property in which son has right by birth... 202
no rule of survivorship 202
principles of any general system of law inapplicable to— ... 202
Birbhum Ghatwalis and Digwaris 202
permanent undertenures on condition of police duty from before permanent settlement can't be annulled 202
Shikmi Ghatwalis are not transferable nor can be seized in execution 202
Bankura Ghatwalis their history 203, 204
the system described 203, 204
are permanent and hereditary 203
can't be resumed on the ground of services not required ... 203
a Deputy may be appointed by the Magistrate when the holder incapable 203, 205
are impartible 203
governed by rule of primogeniture 262
Hunter's discription of them 204
considered as neither permanent and heritable 205
held to be permanent and heritable when existing from before permanent settlement 205

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

GHATWALI—*Continued.*
Civil Courts power to declare right when dismissed by Collector 206
jagirs of Pachete 206
analogous to Ghatwalis 206
services due to Government 206
how rent assessed 206
not subject to ordinary rules of inheritance 207
held on condition of approval of heir by Government ... 207
are impartible and inalienable and not attachable in execution ... 207
can't be sold even for rent 207
jagirdars and Ghatwals under Digwars 207
Government has power of appointment and dismissal ... 207
go to the eldest son or nearest members of family capable of performing duty 207
Magistrate's power of dismissal 208
Civil Court can't interfere in case of dismissal 208
in recent cases civil court assumed power to give relief in such cases 208
limitation in case of unauthorized tenure created by Ghatwal 343-344
possession of a tenure when adverse against successor 145, 343

GORDON—
settlement 172

GOVERNMENT—
acts in sovereign right can't be questioned by courts ... 304
can be questioned by Parliament 304
Civil Courts power to grant injunction 304

GRANT—
see Confiscation, Succession.
Regrant, Maintenance.
incidents of new grant 121, 281, 292
effect of Reg. 25 of 1802 121
by Hindu Kings 150, 152

H.

HIKIMALI TENURES 138
HUNSHPORE RAJ 285
HURBHANGA JAGIR ... ... Addenda p. xl
HUTWA RAJ—
its history 77

I.

ILLUM—
Nambudri Illums 278
limitation in case of grant without necessity 341

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

ILLUVANS 218

IMMEMORIAL—

see custom, evidence

IMMIGRATION—

into India 47
tribes that entered India 48

IMPARTIBILITY—

see Custom, Evidence.
things impartible according to Hundu Lawgivers 18
subject of the lectures 18
in endowed property 22, 23
in Polygars, Vatans jagirs, Saranjams 24
in property attached to offices 25
whether goes together with inalienability ... 25, 97, 102, 126
history of 29
disuse of extra share 29
of zamindaris till 1793 61
not an incident of property but family custom 123
may be discontinued 123
not attached to estate 312
only Kulachar 312
no presumption that large estates are impartible 314
rule of the Privy Council 317
small estates may be impartibile 318
mixed question of fact and law 325
custom of impartibility three kinds 318
effect of Reg. 11 ... ... 315, 317

IMPARTIBLE ESTATE—

see Inalienable Estates.
no right by birth in— 101
no coownership in— 101
Hindu Law of the subject 102
can it be joint-family property 84, 112
case law on the above 87, 94
whether there is right of survivorship 103
alienable until contrary custom proved, case law ... 94, 97, 103, 111
can be devised by will 126
can there be separation in joint-family estate 114
proof of separation 115, 120
Muhammadan impartible estates 279, 282
in Orissa 69
in Chota Nagpore 70
in Oude 71
how far successor bound to pay debt of former owner 124, 126

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

IMPARTIBLE ESTATE—*contd.*

how far successor is legal representative ... 124, 126
mortgages binding on successor 126
on inalienable estates debts binding only when for necessity ... 126
powers of disposal of the holder of an impartible property 116, 129
power to dispose of accumulations 129

INALIENABLE ESTATES—

see inalienability.
debts and mortgages not binding on successor except for legal necessity 126
holder has power to grant leases for a term 127
to grant quarrying leases 127
to open new mine 127
power to make gifts of land for religious and charitable purposes 127
power to grant land to Brahmans bards, junior members, public officers and feudal lords 127
vatans inalienable 167

INALIENABILITY—

incident of ancient land tenures 25
does not necessarily go with impartibility 95
denial for 12 years makes a tenure lose its character of— ... 212

INAM—

see Saranjam.
grants in Bombay alienations of royal share of revenue ... 153
not of land until contrary proved 153, 154
may be made in terms to convey proprietary right 154
original history and legal position of Inams 175
inams attached to public offices governed by Act III of 1895 and Act IV of 1866 174
legislative provisions about inams 176
Civil Court debarred from entertaining claims to possession and succession under Reg. 6 of 1831 176
Civil Court's power to make declaration 209
inalienable under Reg. 6 of 1831 177
effect of enfranchising an inam ... 165, 168, 176, 178, 180, 178
enfranchisement and settlement does not interfere with right to subordinate shares by members of family 178
does not annul prior alienation 167
after enfranchisement becomes alienable 179
widow enfranchising does not become absolute owner to the prejudice of reversioners 179
enfranchisements gives absolute title but not in derogation of the rights other members 188
members of the family can prevent alienation 181

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

INAM—*contd.* PAGE.

inam lands attached to offices are inalienable and not liable to execution 181
resumption of private service inams 181
not allowed when holder willing to render service 182
mokhasa grant not resumable 182
grants for personal service subsequent to permanent settlement resumable 182
settlement with head of a Bhattavirti inam did not destroy right of other members 174
Madras inams of three kinds 174

INDIA—
invasion of— 48, 49
change of dynasties 49, 50

J.

JAGIRS—
jagirs of Burdwan and Manbhoom 207
for life 135, 155, 209
not transferable beyond life time 210
in Palamow 138
of Pachete 206
assignment of revenue by Muhammadan rulers ... 57, 152
history of jagirdars 153
described in Haringtons Analysis 156

JAIGIRS AND SARANJAMS 154

JIVAI 134
see maintenance.

JOINT FAMILY—
impartible estates, can they be joint-property 84
case law on the above 87, 94
Right by birth and co-ownership denied in impartible estate ... 101
Character of joint-family impartible estate 112
can there be separation in respect of joint-family impartible estate 112
there can be separation 114
proof of separation 115, 116
what constitutes exclusion 336
Limitation 335, 337

JUDICIAL PROCEEDINGS—
see Civil Court Jurisdiction, Custom, Limitation; Resjudicata.

JUNIOR MEMBERS—
right to maintenance 130, 131
widows and unmarried daughters entitled to maintenance ... 131
right of residence 131

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

JURISDICTION—
see Civil Court.
of courts in respect to Feudatory States 300
Civil Courts can't question acts of Government in sovereign right 303, 304
Parliament can question Government Acts 304

K.

KAMANDAKI NITI SHASTRA 232
KARNARVAN 217
power of— 217
position of— 275
whether he can have separate property 217
decree against 217
how far binding 219
can be removed 221
by suit 275, 211, 372
blindness and insanity disqualifies 220, 275, 276
KARNUM 72
succession to— 271, 272
KATHIWAR—
customs of— 360
KHASIA RAJES 317, 301
KHSATRIYAS—
caste among Persians and Indians 6
they and Brahmins originally one tribe 42
invaders made 48
disappearance in Nanda's time 48
KINGSHIP—
its history among Aryan nations 5, 221, 229
king not priest 5, 222, 224
impartible in Europe after 10th century 11
sometimes divided among early Aryans 11
king not master of land 20
Hindu idea of— 21
European idea of— 22
slavery and kingship 28
war only occupation of early kings 41
kings chiefs of tribes 46
Dr. Frazer's opinion 221
Sir Henry Maine's opinion 221

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KINGSHIP—*contd.* PAGE.

divine character of— 227, 229
devolution of Kingship 223, 225
Tacitus's opinion 225
among Rajputs 225
impartibility not originally an incident 227

KULKARNIS 52, 53
their duties and rights 55

KUNJPURA RAJ—
its history 279

KURDA' RAJ—
its history 75

L.

LAND SYSTEM—
village communities 26
inalienability 25
among Aryans and ancient Indians 7, 8, 9, 27
in the Punjab 28

LEGAL MEMORY— 319, 321
see Evidence, Custom.

LIFE GRANTS—
see maintenance grant

LIMITATION—
see Vatan, Impartible estate, Ghatwali.
mere notice claiming a holding to be perpetual would not make title adverse so as to avoid lapse 145
may sometimes be adverse 145
adverse possession for 12 years bars title to impartible property ... 335
adverse possession in case of joint-family estate ... 333, 338
what constitutes exclusion 336
in case of usurpation 338
enjoyment of a portion 338
receipt of maintenance whether slaves limitation 339
possession of a widow not entitled whether adverse ... 339
limitation in case of alienation 340
in case of alienation of Vatan 340
in case of possession of widows under Oude Act 341
whether Art. 141 or 144 applies 334, 342, 343
whether Art. 142 applied in case Christian Oude Taluqdars ... 334
in case of leases of inalienable estates 344
in suits for maintenance 344, 345
limitation in case of alienation without necessity 341

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

M.

PAGE.

MALABAR LAW 219, 272
see Tarwad.

MAINTENANCE—
liability to maintain members of family 129
principles on which right to—based 129, 130
who are entitled to— 130
sons entitled to— 130
illegitimate sons entitled 130, 131
junior members entitled 130, 131
widows and daughters of junior members entitled ... 131
descendants of collaterals entitled to— 136
decree should direct payment of future maintenance ... 134
grants in Kathiwar descendible to male issue 134
Jivai or Aida grants 134
may be subdivided 134
rights of widows and daughters in such grants 134
lapse or failure of male issue 134
subsequent adoption does not prevent lapse 134
savings out of maintenance absolute property 135
maintenance whether a charge 131
no charge against creditors unless charged 132
court usually makes it a charge 132
sometimes part of the estate only charged 132
whether charge depends on the terms of the deed 132
maintenance to younger brother's and rest of the family recoverable by their issue 133
conditional grant for unborn persons invalid 133
Maintenance in Muhammadan families holding impartible estates 270
amount of maintenance one-fourth payable according to Sukraniti 234, 133
proportionate to fair wants of persons of the family payable ... 133
what proportion granted in cases 133
procedure in suits about 345, 348
wrongful withholding must be proved 346
maintenance may be decreed in suits for possession ... 346
past maintenance may be decreed in suit for declaration ... 346
future maintenance should be directed to be paid in decree ... 346
future maintenance can be realized by execution 346
mesne profits not allowed when maintenance not offered ... 347
pending suit younger brother or widow may claim maintenance 347

MAINTENANCE GRANT—
grants in ancient times impartible and inalienable and heritable 142
hereditary maintenance grants are now partible with all incidents of joint-family ancestral property 142

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

MAINTENANCE GRANT—*contd.* PAGE.

maintenance grants without words of inheritance for life of grantor or grantee 135, 136
not when for maintenance of family 144
impartible only when for the maintenance of rank 135
otherwise divisible 135
may be permanent by custom 136
may be impartible governed by the rule of primogeniture by custom 136
originally considered to be inalienable 143
impartible grants not inalienable 144
holder of impartible hereditary maintenance grant can sell or mortgage for necessity or antecedent debt 143
son's interest bound in above circumstances 144
creditor of a son can sell his interest in maintenance grant ... 144
grantee has no mineral rights 144
acceptance of rent no recognition of permanency of a lease by a maintenance grantee 144
claim to hold a tenure created by a maintenance grantee when adverse 145
of Durbhangha, incidents 138
may be impartible 139
revert to the Raj on failure of male issue 139
widow can not take even if grant partitioned 140
custom may be proved to show the incidents attaching to a grant by deed 141
grants in Orissa heritable, but not transferable and revert on failure of male issue 141
grants in lieu of specific sum absolute self acquired property ... 142
can't be resumed without provision to the descendants and widows and daughters of a junior member 137
Putrapautra, paramparayan grants of Madras absolute and heritable 140
putrapautradika grants of Chota Nagpore lapse on failure of male issue even though in terms descendible to children ... 137
they are alienable, but revert on failure of male issue of the original grantee 137
can't be resumed from alienees when there is male issue ... 139
impartible in Chotanagpore 137
hikimali tenures of Chota Nagpore 138
khorposh jagirs of Palamow 138
sometimes heritable and alienable 139
sometimes revert to Government on failure of male issue ... 138

MAKKATAYAM LAW— 218

see Tarwad, Karnavan.
can't be compulsory partition at the will one member ... 219

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

MARUMAKKATHAYAN LAW— 215, 275
see Tarwad, Karnavan.
MAZUMDARS 45, 56
MEHTA 45, 56
MESNE PROFITS—
not allowed when maintenance not offered 346
MIGRATION—
effects of— 293
MILITARY TENURES—
see Polliem Ghatwali.
characteristics of— 23
MINES AND MINERALS—
holder of inalienable estate has power to grant quarrying leases and to open new mines 127
maintenance grantee no right to, but can work old mines ... 144
MIRANZI ESTATE 290
MOKHASA GRANTS 182
MOKUDDUM MEANING OF— 55, 65
MORTGAGES—
binding on successor 126
in inalienable estates necessity must be proved to make them binding on successor 126
MOULAS—
under Hindu system 67
MUHAMMADAN—
impartible estate 279, 282
MUNDULS 65

N.

NADA DAVOLU ESTATE 218
NAMBUDRI BRAHMAN—
custom of— 278
eldest male succeeds 278
females debarred 278
NARGANTI POLLIEM—
its history 83

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

PAGE.

NAYAK DYNASTY 278
polliems created by it— 278
NUZVID PALAYAM 287

O.

OFFICES—
hereditary 45
village offices 45
history of tenures 51
system under Mahrattas 52
system under Muhammadans 57
in Orissa 69
under Hindu Kings 151, 152

ORISSA—
system under Native Kings 69
Gurjat and Killajat Mahals of— 147, 266
Rajas 146
Public officers 146
Tributary Mahals 266

OUDE—
see Custom.
succession among talukdars 265
custom how for admitted under Act I of 1869 ... 332, 336
Talukdar's Act ... ... 478—499

P.

PACHETE RAJ ... ... Addenda p. xl
PAREKH 45, 56
PARESHNATH RAJ—
its history 76
PARTIBILITY OF PROPERTY—
its history 1, 16, 18
a mixed question of fact and law 325
PATEL 53, 54
PATER FAMILIAS—
among ancient Aryans 12
his rights and liabilities 12
POLLIEMS—
description in Fifth Report 148
description by Privy Council 149
originally military tenures now in the nature of Raj 149, 150
recognized by Reg. 4 of 1831 150
females not precluded from succeeding to Polliem ... 150, 262

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

POLYGARS— PAGE.
originally feudal lords 23
POSSESSION—
see limitation.
PRESUMPTION—
see Evidence.
no presumption that large estates are impartible ... 121, 325, 314
about time 317, 319
PRIMOGENITURE—
among ancient Indians 13, 45
not originally prevalent in ancient Europe ... 12, 13
right of the eldest to extra share prevailed among all Aryan nations 16
lineal or representative primogeniture 235
primogeniture by proximity 235
history of— 235
evolution of the rule of lineal primogeniture 236
lineal primogeniture how far prevalent ... 236, 250
representative primogeniture settled in Bracton's time ... 247
settled rule, lineal primogeniture applies to direct descendants 247, 248
rule as regards collateral succession 248, 252
among Muhammadans holding impartible estates ... 280, 281
PRODHANS 65
under Hindu system 66
PUCCHEES SAWAL— ... ... 508—526
notwithstanding—debts for necessity binding 126
acted on — 147
PUDDOKUTA AND PALAMATLUR PALAYAMS 283
PUTRAPANTRADIKA GRANTS— 137
see Maintenance Grant.
lapse on failure of male issue 137
impartible in Chotanagpore 139
alienable but revert on failure of male issue of grantee ... 137

R.

RAJES—
history of some Rajes 74, 80
Hindu Law about Rajes 102
inalienable according to Hindu Law 183
may be partible 123
of Bengal whether impartible 316, 317
RAJPUT STATES—
system in 50, 51
REGULATION XI OF 1793 ... ... 363, 367

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

REGULATION X OF 1800 ... ... 367, 368
REG. 29 OF 1814 ... ... 369, 371
REGULATION 25 OF 1802 448
REGULATION 6 OF 1831 ... ... 176, 177
RAIPORE ... ... Addenda p. xl
RAMGURH RAJ—
its history ... ... 75, Addenda p. xl
RAMNAGAR RAJ 77
RAMNAD ESTATE—
its history 282
succession in— 283
RAWATPORE ... ... Addenda p. xl
REGRANT—
see confiscation, succession.
presumption that old incidents continue 121
circumstances inconsistent with continuance 121
consequences of— 281, 292
principles applicable 290, 292
RENUNCIATION—
effect of— 292
RESETTLEMENT—
see regrant, confiscation, succession 281, 292
after sale in execution or for arrears of revenue ... 281, 292
RESJUDICATA—
when decrees resjudicata against successor of impartible estates 347, 359
in case of Vatans 349, 351
compromise decrees how far binding 359, 36
RESUMPTION—
Ghatwalis, Vatans, Inams and other service tenure when resumable 210
grants for public duties not resumable by Zamindar ... 210
grants before permanent settlement not resumable ... 110, 211
grants for personal service resumable 210
grants in lieu of wages resumable 211, 212
unconditional grants for past service not resumable ... 211
when can Government resume lands granted for public service ... 211
grants subject to burden of service not resumable ... 211, 212
chowkidary chakeran and other service tenures not resumable without showing that on settlement of zemindary reservation had been made in regard to its rent 211

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

RESUMPTION—*contd.* PAGE.

hereditary service tenures existing from before permanent settlement not resumable 212
principles determining when service tenures are resumable ... 213
refusal to render service for 12 years makes the tenure lose its character of service tenure and fetter of inalienability ... 214

RUNKA ESTATE ... ... Addenda p. xl

S.

SALE—
effect of resettlement after sale 281, 292

SALIC LAW—
its similarity to Manu's law 9

SAMANTAS—
under Hindu system 67

SANAD—
effect of accepting 281, 292
incidents of estates created by— 121

SARANJAM— 172
Hindu word for jagir 156
may be for personal services Jat Saranjam or for maintenance of troops or Fouz Saranjam 154
Etheridge's description of— 154, 155
ordinarily impartible and descends to the eldest representative ... 157
rights of other members 157
holder like a trustee accountable to other members... ... 157
granted for the support of a distinguished family generally impartible 157

SEPARATION—
whether possible in impartible estates 112, 115
proof of separation 115, 120

SERFS—
among ancient Aryans 28, 29

SERVICE TENURES—
see Jagir, Saranjam, Inam.
history 51
hereditary village offices 45
in Maharatta times 52, 56
in Muhammadan times 57
in Orissa 69
in Bombay 73
tenancies created by service tenure holders when permanent ... 145

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

SERVICE TENURES—*contd.*

their incidents under Hindu Rajas 151, 152
when ancient and have descended from generation to generation hereditory 210
conditional on future service 156, 213
on condition of past service 156, 213
subject to the burden of service 156
grant merely in lieu of service 156
for private service 157
for public services 157
effect of abolition of services 164, 167, 213
enfranchisement does not annul a prior alienation 167
resumption of service tenures grants for personal service subsequent to permanent settlement can be resumed ... 182
not resumable when service not refused... 213
grants in lieu of wages resumable 212
resumption when services not necessary 213

SETTLEMENT—

see regrant, resettlement, succession

SHIVAGANGA ZAMINDARY—

its history 81, 283
succession in— 283

SLAVERY—

prevalent among Aryans 27

SOHAG GRANTS 138

SOOSUNG RAJ—

its history 81

SUCCESSION CERTIFICATE—

whether necessary in respect of impartible property 124
conflicting decisions 124

SUCCESSION—

see impartible property, primogeniture.
ancient rule of Kingdoms in Sukra Niti ... 220, 231
kingdoms governed by Kulachar according to Smritis and the Ramayana... 229
rules of, according to Mahabharata 230
blind son excluded 230
even his son excluded 230, 232
oneeyed excluded 231
rules of succession according to Niti Shastras ... 232, 234
deaf, mute, blind, leper, impotent do not succeed ... 232, 233
natural born son succeeds in preference to adopted son ... 234

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

SUCCESSION —*contd.* PAGE.

daughters may take 234
primogeniture is the rule 235
how far lineal primogeniture prevails 236, 250
settled that lineal primogeniture applied to direct male descendants 247, 248
what is the true rule as regards collateral succession 248, 252
general rule of succession 252, 256
eldest male descendant in the direct senior line takes first ... 255
elder son by a junior wife succeeds 255, 256
amongst twins, first born takes 256
adopted son can not take when there is direct male lineal descendant 256
subsequently adopted son divests brother in joint-family impartible estate 257
rule of tanistry or the right of the fittest among sons prevalent in some estates 257
right of widows and daughters 259
senior widow takes 259
eldest daughter takes 259
rule of survivorship among daughters 259
eldest among daughters' sons takes after the death of all the daughters 259
daughters and daughter's sons do not succeed in some parts of Northern India, Oude, Punjab and Bombay 266
mother's right 261
adopting mother's right 261
grand-mother's right 261
after widow next heir of her husband surviving takes ... 262
females succeed in Ghatwalis 262
females succeed in Polliems 262
full brother preferred to half-brother 262
in Orissa illegitimate brother of a Sudra may take by survivorship 263
succession regulated by particular schools of law to which a proprietor is subject 263
to accumulations 294, 299
to accretions 294
to moveables 298
succession in case of migrations 293
succession in case of renunciation 292
succession in Tippera Raj 263
right of Yuvaraj 263
succession in Oude Taluks 263
succession in Garjat Rajas and Tributary Mahals of Orissa ... 266
succession to estates in Chota Nagpore 266
succession to Vatans 267, 270

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

SUCCESSION—*contd.*

succession to service tenures 268, 270
discontinuance of service does not abolish custom of succession 261, 269
right of the elder in Vatans 270
right of females to succeed to Vatans 271
succession in Madras Karnams 271
succession in Tarwads 272, 275, 218
disqualifications to succession 275
aliyasantana succession 276
nomination of successor under Aliyasantana Law 277
succession in Dayadi Pattans 278
succession among Nambudris 278
succession among Kamblar Polliems in Madara 278
succession in Muhammadan impartible estates ... 279, 282
succession in Kunjpura Reasut 279
succession in Tank Reasut 280
succession in Oude Taluks held by Muhammadans ... 281
succession in Feudatory States 281
succession in estates confiscated and regranted or resettled ... 281
succession in Ramnaad estate 282
succession in Shivagunga estate 283
succession in Hunspore or Hutwa Raj 285
in Bettia Raj 286
in Udayapura Palayan 287
in Nuzvid Palayam 287
in Nadada volu estate 288
in Belgam Zemindary 289
in Mirangi Zemindary 290

SUKRA NITI—

rules of— 232, 236

SUSUNG RAJ 325

T.

TALUKDARS—

see Oude, Limitation 65
succession among Oude 265

TANISTRY—

how far prevalent 257, 258

TUMKOHI RAJ 293

TANK REASUT—

its history 280

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE.

TARWADS— 73
description of— 214
constitution of— 215
succession in— 272, 274
marumakkathayam law 216, 275
how far impartible 216
incidents of— 216, 217
can be partitioned 218
Karnarvan's double share 218
succession in— 218
makkatayam law 219
powers of karnarvan 216, 220, 275
andravans entitled to maintenance 219
but ordinarily not separate maintenance 219
can be alienated with consent of all members but alienation must be signed by Karnarvan and senior andravan 220
when does it escheat 218
adoption allowed 276
but not when there is a natural born son 276
members of the family can nominate a successor 277
right of the eldest 277
Illuvans and Tiyans 218
customs of Zamorin family 273
senior lady succeeds 273
TEKAITS OF CHOTA NAGPUR 147
rule of succession 266, 147
TIPPERA RAJ—
customs of— ... ... 265, Addenda p. xl
jurisdiction of British Courts 302, 303
maintenance of junior members 303
TIYANS— 218

U.

UDAYAPURA—
Palayam 287

V.

VAISYAS—
originally servile caste among Aryans engaged in agriculture ... 7
VATANS—
hereditary 157
service tenure 268
governed by Acts VII of 1863 and V of 1886 158

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

PAGE.

VATANS—*contd.*

nature of the estate of Vatandar before 1827 158
Elphinstone's report on— 158
effect of legislation 159, 160
legal position of Vatandar 160
not successive life-estate 160
adverse possessive binds successor 161
judgment resjudicata against successor 161
whether lands become alienable when services are abolished 161, 268
discontinuance of service does not abolish custom 72
family custom may bind the estate after abolition of services 163, 261
effect of enfranchisement 165
succession to— 167
possession for 12 years by alienee 340
Civil Court can make declaration that a person has right to be registered as Vatandar 305
strictly inalienable and abolition of services and resettlement does not annul prior alienation 167
vatandar's conveyance is for his own life 168
right of heirs against alienations 169
vatans now partible, but may be impartible by custom ... 170
partition allowed subject to the right of the Desai to receive part of the income for performance of duties 170
in Bombay inalienable 171, 172
mortgage and sale in execution effect of before and after 1827 171, 172
can be alienated for life now 172
collector's power to recover possession on alienation ... 172
mere order that possession be delivered to applicant without jurisdiction ... ...
Gordon settlement 173
Gordon settlement did not make the property partible and alienable 173
mortgage by a Vatandar good for his life 173
lease by Vatandar good for his life 173
female members postponed in succession to males 173
widow can not adopt when property devised by will to daughters 174
widow can not adopt on the death of the first adopted son ... 174

VILLAGE—

system in ancient India under Hindu Kings 151

VILLAGE COMMUNITIES—

truth about them 28

VILLAGE OFFICES 151

see Offices, Inams, Vatans.
their incidents in ancient times 152

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PAGE

VISHNU GUPTA 232

VISPATI—

its equivalents in other Aryan nations 3

VRIHASP[illegible]—

his rules about Rajes 231

W.

WIDOW—

see Succession.
right of succession in impartible property 259
senior widow preferred to junior 259
compromise with widow, effect of— 122
takes life-estate in impartible property 261
possession of a widow when there is no female succession
whether adverse 339, 340
in respect of Vatans 340
possession of widows under Oude Act 341

WIDOWS OF JUNIOR MEMBERS—

entitled to maintenance 131
can't be deprived by agreement with their husbands ... 131

Y.

YADAVAS—

new comers 47
called Dases in Rig Veda 47

YAJNAVALKYA—

rule about immemorial time 319

YUVARAJ—

custom in ancient India 266
custom in Tippera 265

Z.

ZAMINDARS—

in Muhammadan times 57
their history 57, 58, 61
under Pathans 59
originally crown officers 58, 64
Kayastha zamindars of Bengal 59
three classes 63, 64
Prodhans 65
declared proprietors by the Supreme Court 67

CENTRAL LIBRARY

PAGE.

ZAMINDARIES—
impartible till 1793 ... ... 61, 315
during Muhammadan times 314
effect of Regulations 315, 318
rule of the Privy Council 317
no presumption of impartibility in respect of large zamindaries ... 325

ZAMORIN—
customs of the family 273

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